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No. 6168

IN THE

*Vol
1681*

United States

Circuit Court of Appeals

For the Ninth Circuit

R. E. WENIGER AND CHARLES BLOOM,

Appellants,

vs.

UNITED STATES OF AMERICA

Appellee.

Transcript of the Record

VOLUME I

On Appeal from the District Court of the United States
for the District of Idaho, Northern Division

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

R. E. WENIGER AND CHARLES BLOOM,
Appellants,

vs.

UNITED STATES OF AMERICA
Appellee.

Transcript of the Record

VOLUME I

On Appeal from the District Court of the United States
for the District of Idaho, Northern Division

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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Attorneys for Appellants.

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IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION

No. 3035

INDICTMENT

Charge: Vio: Sec. 37, Penal Code

UNITED STATES OF AMERICA,

v.

R. E. WENIGER, indicted as R. E. WINEGAR, CHARLES BLOOM, JOSEPH FLORIN, F. O. WELCH, JOSEPH SPECK, JOHN MALLOY, NICK TASULIN, JOHN THOMPSON, LOUIS IRIKLA, JAMES NORMILE, WILLIAM E. COUGHLIN, H. R. WILCOX, CHARLES FOND, HERBERT ANDERSON, CHARLES ANDERSON, JOHN RANTELLA, FRANK HAHN, WAINO PIKKERAINEN, WILLIAM HEADLUND, CHARLES HARTLEY, LEAURO ARO, GUS ARO, whose true name is GUST ARO, WALTER JOHNSON, HENRY KOHKONEN, MIKE KENNEDY, ROY APPLETON, MILFORD GARDNER, indicted as CURLEY GARDNER, JOHN JASKARA, BERTHA STROM, BABE KELLY, AGNES WEST, indicted as AGGIE WEST, JIMMIE RYAN, MONA McDONALD, ANNA TORNBERG, REGINA DALO, HERMAN ARBLISS, whose true name is HERMAN ARBELIUS, ELMER OLSON, AR-

THUR J. HARWOOD, JOHN WHEATLEY, CLARENCE McMURRAY, CHARLES RISTAU, HENRY FOSS, and GEORGE HUSTON, and HARTFORD MORPHY, whose true name is HARCOURT MORPHY. Defendants.

UNITED STATES OF AMERICA, }
DISTRICT OF IDAHO } ss.

The Grand Jurors of the United States of America, within and for the District of Idaho, sitting at Moscow, Idaho, in the Central Division thereof, being duly selected, empaneled, sworn and charged upon their oath do present:

That R. E. Winegar, (whose first and true name is to the grand jurors unknown) Charles Bloom, Joseph Florin, F. O. Welch, (whose first and true name is to the grand jurors unknown) Hartford Morphy, Joseph Speck, John Malloy, Nick Tasulin (whose first and true name is to the grand jurors unknown), John Thompson, Louis Trikla, James Normile, William E. Coughlin, H. R. Wilcox (whose first and true name is to the grand jurors unknown) Charles Fond, Herbert Anderson, Charles Anderson, John Rantella, Frank Hahn, Waino Pikkerainen, William Headlund, Charles Hartley, Leauro Aro, Gus Aro (whose first and true name is to the grand jurors unknown) Walter Johnson, Henry Kohkonen, Mike Kennedy (whose first and true name is to the grand jurors unknown) Roy Appleton, Curley Gardner (whoses first and true name is to the

grand jurors unknown), John Jaskara, Bertha Strom, Babe Kelly (whose first and true name is to the grand jurors unknown) Aggie West (whose first and true name is to the grand jurors unknown), Jimmie Ryan (whose first and true name is to the grand jurors unknown), Mona McDonald, Anna Tornberg, Regina Dalo, Herman Arbliss, Elmer Olson, Arthur J. Harwood, John Wheatley, Clarence McMurray, Charles Ristau, Henry Foss and George Huston, (hereinafter referred to as the defendants) in the Village of Mullan, County of Shoshone, State and District of Idaho, Northern Division and within the jurisdiction of this court, on or about the first day of February, A. D., 1924, and thereafter continuously from that date to and including the date of this presentment, did, in the said Village of Mullan, County, State and District aforesaid, wilfully, corruptly, unlawfully, knowingly and feloniously conspire and agree together and with each other other to commit certain offences against the United States of America, and the laws thereof, to-wit, to possess, to transport, to sell and to manufacture intoxicating liquors containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, to-wit, wine, beer and whiskey, in violation of Section 3, Section 25, and Section 26 of Title II of the Act of Congress of October 28th, 1919, commonly known as the National Prohibition Act, in the said Village of Mullan, County, State and District aforesaid, and to maintain in said Village of

Mullan, County, State and District aforesaid, a large number of common nuisances (the exact number of which is to the grand jurors unknown), to-wit, rooms, houses, buildings, structures and places where intoxicating liquors containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, to-wit, beer, wine and whiskey, were to be manufactured, sold, kept for sale, and bartered for beverage purposes, in violation of Section 21, of Title II, of the aforesaid Act of Congress, known as the National Prohibition Act.

And the Grand Jurors aforesaid, upon their oath as aforesaid, do further say, that at the hereinafter stated times and places, in furtherance and pursuance of, and to carry out the unlawful purpose, and to effect the object of said unlawful conspiracy aforesaid, the hereinbefore named defendants did the following overt acts, to-wit:

1. That on or about the fourth day of February, A. D., 1924, in the Village of Mullan, County of Shoshone, State and District of Idaho, Elmer Olson and Arthur J. Harwood, then and there being trustees of the said Village of Mullan, as such trustees, voted for the passage of Ordinance Number 105, of said Village of Mullan, Idaho.

2. That on or about the fourth day of February, A. D., 1924, in the Village of Mullan, County of Shoshone, State and District of Idaho, one J. E. Gyde, being then and there an attorney at law, as such attorney for the

said village of Mullan, in conference advised Elmer Olson and Arthur J. Harwood, that they could not legally permit persons to deal in intoxicating liquors.

3. That on or about the tenth day of November, A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Arthur J. Harwood, John Wheatley, Charles Ristau, Henry Foss and George Huston, being then and there trustees of the said Village of Mullan, as such trustees, voted to appoint one F. O. Welch, a police officer of the said Village of Mullan, Idaho.

4. That on or about the fifth day of November, A. D., 1925, in the Village of Mullan, County of Shoshone, State and District of Idaho, Arthur J. Harwood, Elmer Olson and John Wheatley being then and there trustees of the Village of Mullan, as such trustees, voted to appoint one Joseph Florin a police officer of said Village of Mullan, Idaho.

5. That on or about the twenty-fifth day of November, A. D., 1928, in the village of Mullan, County of Shoshone, State and District of Idaho, Charles Bloom received from Anthony McGill, thirty dollars.

6. That on or about the twenty-fifth day of November, A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Charles Bloom warned Anthony McGill that the Federal prohibition agents were coming to raid the Mullan Inn.

7. That on or about the twentieth day of October, A.

D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Charles Bloom drank whiskey in a place known as the Mullan Inn.

8. That on or about the fifth day of July, A. D., 1929, Arthur J. Harwood, John Wheatley, Charles Ristau, Henry Foss and F. O. Welch, in the Village of Mullan, County of Shoshone, State and District of Idaho, discontinued the collection of money from persons in the said Village of Mullan, Idaho, who were violating the National Prohibition Act.

9. That on or about the fifth day of July, A. D. 1929, Arthur J. Harwood, John Wheatley, Charles Ristau and Henry Foss, in the Village of Mullan, County of Shoshone, State and District of Idaho, being then and there trustees of the said Village of Mullan, as such trustees, agreed to and did discontinue the issuing of licenses for so-called soft drink places of business.

10. That on or about the fifth day of March, A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Joseph Speck sold five drinks of whiskey.

11. That on or about the twenty-fourth day of October, A. D., 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, Charles Hartley, sold one drink of whiskey.

12. That on or about the eleventh day of February, A. D., 1929, in the Village of Mullan, County of Sho-

shone, State and District of Idaho, at the Bolo Bar, William E. Coughlin, possessed an unknown amount of whiskey.

13. That on or about the twenty-eighth day of June, A. D., 1929, in the Village of Mullan, County of Shoshone, State and District of Idaho, Mike Kennedy sold two drinks of whiskey.

14. That on or about the fifth day of March, A. D. 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Curley Gardner sold four drinks of whiskey.

15. That on or about the fifth day of March, A. D. 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Roy Appleton sold twelve drinks of whiskey.

16. That on or about the eighteenth day of May, A. D. 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, James Normile sold one drink of whiskey.

17. That on or about the twenty-ninth day of June A. D. 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, Louis Trikla, had in his possession one pint of whiskey.

18. That on or about the thirteenth day of April A. D. 1929, in the Village of Mullan, County of Shoshone, State and District of Idaho, Charles Fond had in his

possession an unknown amount of whiskey.

19. That on or about the fifth day of March, A. D. 1928 in the Village of Mullan, County of Shoshone, State and District of Idaho, H. R. Wilcox sold four pints of beer.

20. That on or about the fifth day of March A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Frank Hahn sold two drinks of whiskey.

21. That on or about the fifth day of March A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, John Rantella, sold one pint of whiskey.

22. That on or about the third day of August, A. D., 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Mona McDonald, had in her possession, forty-two bottles of beer.

23. That on or about the twenty-sixth day of December, A. D. 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, Leauro Aro, had in his possession an unknown amount of beer and whiskey.

24. That on or about the twenty-second day of May A. D. 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, John Jaskara sold two drinks of whiskey.

25. That on or about the twenty-seventh day of December, A. D. 1928, in the Village of Mullan, County of Shoshone, State and District of Idaho, F. O. Welch delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

26. That on or about the twenty-seventh day of January, A. D. 1929, in the Village of Mullan, County of Shoshone, State and District of Idaho, F. O. Welch delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

27. That on or about the twenty-seventh day of February, A. D., 1929, in the Village of Mullan, County of Shoshone, State and District of Idaho, F. O. Welch delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

28. That on or about the twenty-seventh day of February, A. D., 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, Joseph Florin delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

29. That on or about the twenty-eighth day of March A. D. 1927, in the Village of Mullan, County of Shoshone, State and District of Idaho, Joseph Florin delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

30. That on or about the twenty-eighth day of April A. D., 1927, in the Village of Mullan, County of Sho-

shone, State and District of Idaho, Joseph Florin delivered to J. L. Martin, a list showing payments by persons dealing in intoxicating liquors.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

H. E. RAY

United States Attorney for the
District of Idaho

WALTER DRISCOLL

Foreman of the U. S. Grand Jury.

WITNESSES EXAMINED BEFORE THE
GRAND JURY IN THE ABOVE CASE:

Joseph L. Martin	Geo. S. Price
James E. Gyde	D. A. Sloan
H. J. Hull	M. D. Needham
Anthony Hugh McGill	Marie Glazer
H. W. McCreery	F. A. Savage
D. E. Dennew	C. B. Steunenbergl
Josephine Tosher	Edith Darline Downen
Helen Grant	William Coumerith
Samuel C. Webb	Julius N. Johnson
J. D. Foster	Lela Margrelle Delama

Presented by the Foreman in open court and filed in the presence of the Grand Jury Nov. 11, 1929.

W. D. McREYNOLDS,
Clerk

(Title of Court and Cause)

PLEA IN ABATEMENT

Filed Nov. 21, 1929

Comes now R. E. Weniger, one of the defendants in the above entitled cause and by way of plea in abatement to the indictment and prosecution in said cause alleges:

I.

That the indictment in said cause was found and returned by a grand jury drawn from the Central Division of the District of Idaho.

II.

That the venire for the said grand jury required the Marshal to summon the said grand jury for the said Division from qualified grand jurors of the said Division; that the said grand jury was composed exclusively of residents of the said Division qualified to act as grand jurors; and held its sessions in said Division and found the indictment in this prosecution in the said Division, to-wit, in the city of Moscow, Idaho.

III.

That the crime charged in said indictment is alleged to have been committed in the Northern Division of the District of Idaho and the said indictment, for the reasons aforesaid, was not found or returned according to law, or by a grand jury empowered to return such indictment and gives no authority for the prosecution of this defendant in the Northern Division of the United

States District Court for the District of Idaho, and the said indictment is void and of no effect as a foundation for the prosecution in this cause.

WHEREFORE this defendant prays that the said indictment and prosecution be abated and that the bond of this defendant given in this cause be exonerated.

TURNER, NUZUM & NUZUM

Attorneys for Defendant,

Charles Bloom,

Residence and P. O. Address:

Spokane, Washington.

STATE OF IDAHO
COUNTY OF KOOTENAI } ss.

R. E. WENIGER, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above entitled cause; that he has read the foregoing Plea in Abatement, and knows the contents thereof and that the same is true as he verily believes.

R. E. WENIGER

Subscribed and sworn to before me this 21st day of November, 1929.

CHAS. H. POTTS

Notary Public for the State of Idaho, residing at Coeur d'Alene

(SEAL)

(Title of Court and Cause)

PLEA IN ABATEMENT.

Filed Nov. 21, 1929

Comes now Charles Bloom, one of the defendants in the above entitled cause and by way of plea in abatement to the indictment and prosecution in said cause alleges:

I.

That the indictment in said cause was found and returned by a grand jury drawn from the Central Division of the District of Idaho.

II.

That the venire for the said grand jury required the Marshal to summon the said grand jury for the said Division from qualified grand jurors of the said Division; that the said grand jury was composed exclusively of residents of the said Division qualified to act as grand jurors; and held its sessions in said Division and found the indictment in this prosecution in the said Division, to-wit, in the city of Moscow, Idaho.

III.

That the crime charged in said indictment is alleged to have been committed in the Northern Division of the District of Idaho and the said indictment, for the reasons aforesaid, was not found or returned according to law, or by a grand jury empowered to return such in-

dictment and gives no authority for the prosecution of this defendant in the Northern Division of the United States District Court for the District of Idaho, and the said indictment is void and of no effect as a foundation for the prosecution in this cause.

WHEREFORE this defendant prays that the said indictment and prosecution be abated and that the bond of this defendant given in this cause be exonerated.

TURNER, NUZUM & NUZUM

Attorneys for Defendant,
Charles Bloom,

Residence & P. O. Address:
Spokane, Washington.

STATE OF IDAHO)
COUNTY OF KOOTENAI)ss.

CHARLES BLOOM, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above entitled cause; that he has read the foregoing Plea in Abatement, and knows the contents thereof and that the same is true as he verily believes.

CHARLES BLOOM

Subscribed and sworn to before me this 21st day of
November, 1929.

CHAS. H. POTTS

Notary Public for the State of
Idaho, residing at Coeur d'Alene.

(SEAL)

(Title of Court and Cause)

ANSWER TO PLEA

Filed Nov. 22, 1929

Comes now the above named plaintiff and for answer to the plea in abatement of defendant R. E. Wenigar, denies each and every allegation of said plea in abatement, and prays the court that the same be denied,

DATED this 22nd day of November, A. D., 1929.

H. E. RAY,

United States Attorney
for the District of Idaho

(Title of Court and Cause)

ANSWER TO PLEA

Filed Nov. 22, 1929

Comes now the above named plaintiff and for answer to the plea in abatement of defendant Charles Bloom, denies each and every allegation of said plea in abatement, and prays the court that the same be denied,

DATED this 22nd day of November, A. D., 1929.

H. E. RAY,

United States Attorney
for the District of Idaho

(Title of Court and Cause)

MINUTES OF THE COURT

NOVEMBER 30, 1929

ORDER DENYING PLEAS IN ABATEMENT

This cause came on for hearing on the several pleas in abatement filed by or on behalf of certain defendants. The following named counsel for defendants were present, to wit: Messrs. Turner, Nuzum & Nuzum, Gray & Potts, Reed & Reed, N. D. Wernette and O. J. Bandolin. H. E. Ray, District Attorney and W. H. Langroise and Sam S. Griffin, Assistants, were present representing the plaintiff.

Documentary evidence was introduced on the part of the defendants, and

Honorable Charles C. Cavanah was sworn and examined as a witness on the part of the plaintiff,

Whereupon, the motions were argued before the Court by Messrs. George Turner of counsel for the defendants, other counsel for defendants submitted pleas of defendants represented by them on said argument.

The Court thereupon announced his decision and ordered that the said pleas in abatement and each of them be, and the same are hereby denied. Exceptions were allowed the defendants to the order.

(Title of Court and Cause)

MINUTES OF THE COURT

DECEMBER 16, 1929

This cause came regularly on for trial before the Court and a jury, H. E. Ray, District Attorney, and W. H. Langroise and Sam S. Griffin, Assistant District Attorneys, appearing for the plaintiff.

O. J. Bandolin, Esquire, was entered as associate counsel for the defendants Walter Johnson, Mike Kennedy, Jack Malloy, Babe Kelly, Jimmie Ryan, Bertha Strom, Mona McDonald and Regina Dalo.

On motion of the District Attorney, it was ordered that the indictment in its entirety be, and the same is hereby dismissed as to the defendant Henry Kohkonen, and said defendant was discharged and his bond fully exonerated.

The District Attorney assenting to the motion of the defendant Elmer Olson for a continuance, it was ordered that the trial of said defendant be continued for the term.

The trial proceeded as to the defendants Charles Anderson, William E. Coughlin, Waino Pikkerainen, Joseph Speck and Agnes West, who were present with their counsel, N. D. Wernette, Esquire; the defendants Roy Appleton, Herman Arblins, Milford Gardner, John Thompson and Charles Fond, who were present

with their counsel, Messrs. Reed & Reed; the defendants Charles Bloom, Anna Tornberg and R. E. Weniger, who were present with their counsel Messrs. Turner, Nuzum & Nuzum; the defendants Arthur J. Harwood, Henry Foss, George Huston, Harcourt Morphy, Charles Ristau, F. O. Welch and John Wheatley, who were present with their counsel Messrs. Gray & Potts; the defendants Regina Dalo, Mike Kennedy, Babe Kelly, John Malloy, Mona McDonald, Jimmie Ryan, Bertha Strom and Walter Johnson who were present with their counsel Messrs. George T. Walker and O. J. Bandolin; and the defendant Gust Aro who was present with his counsel O. J. Bandolin, Esquire.

The Clerk, under directions of the Court, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper to secure a jury. F. O. Spoor, Frank Taylor, Ben Carrigan, Ole G. Langerak, John Cartwright and R. E. Dunlap, whose names were so drawn, were excused for cause; John W. Snyder, D. R. Holderman, J. J. Clark, Ed Anderson and Ralph C. Pense, whose names were also drawn, were excused on the plaintiff's peremptory challenge; and H. R. Davis, James Gunn, A. V. Chamberlain, F. W. Fitze, F. M. Saunders, Frank Horner, George Parr, C. M. Davis, John Larson and J. E. Wallace, whose names were likewise drawn, were excused on the defendants' peremptory challenge.

Following are names of the persons whose names were drawn from the jury box, who were sworn and

examined on voir dire, found duly qualified, and who were sworn to well and truly try said cause and a true verdict render, to-wit:

J. W. Jeffries, A. W. Klein, Bert Fountain, Paul Neal, B. M. Sorenson, Alfon S. Berg, W. J. Chase, Bert Peterson, J. E. Massie, Frank Short, Samuel Sheperd, E. E. Dietze.

The Court admonished and instructed the bailiffs, Ludwig Roper and Leon T. Conditt, regarding their duties in keeping the jury together during the adjournments and recesses of court, and ordered that the jury be so kept together at all times during the trial of the cause, and said bailiffs were sworn in open court to faithfully perform the duties as directed and outlined by the Court.

After a statement of the Government's case by the District Attorney the indictment was read to the jury, who was informed of the plea entered thereto by each of said defendants.

Martin Dean Needham was sworn and examined as a witness and documentary evidence was introduced on the part of the United States.

The jury was excused to the charge of the bailiffs, and

It was ordered that further proceedings herein be continued to ten o'clock A. M. on December 17th, 1929.

MINUTES OF THE COURT

DECEMBER 17, 1929

The trial of this cause was resumed before the Court and Jury. Counsel for the plaintiff and the defendants and their counsel being present, the Jury was returned into court by the bailiffs.

Marcus D. Needham was recalled and further examined and Anthony H. McGill was sworn and examined, as witnesses on the part of the plaintiff.

Further trial of the cause was continued to ten o'clock A. M. December 18, 1929, and the Jury was excused, to the charge of the bailiffs, to be returned into court at that time.

MINUTES OF THE COURT

DECEMBER 18, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and jury.

Anthony H. McGill was recalled and further examined and J. L. Martin and James E. Gyde were sworn and examined as witnesses and documentary evidence was introduced on the part of the plaintiff.

Whereupon, it was ordered that the trial of the cause be continued to ten o'clock A. M. on December 19, 1929, and the jury retired in the charge of the bailiff, to be returned into court at that time.

MINUTES OF THE COURT

DECEMBER 19, 1929

The Government's counsel, the defendants and the defendants' counsel being present, the Jury was returned into court by the bailiffs.

Whereupon, the trial of the cause was resumed before the Court and Jury.

H. J. Hull, William Barren, Julius Johnson, S. C. Webb, F. P. Collins, R. W. Morgan, John D. Pyland, Paul Reed, George R. Hesser, W. A. McGill and H. W. Jewel were sworn and examined as witnesses on the part of the plaintiff.

The Court at this time excused the Jury to ten o'clock A. M. on December 20, 1929, and it retired in the charge of the bailiffs. Further trial of the cause was continued to that time.

MINUTES OF THE COURT

DECEMBER 20, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

F. A. Savage, James B. Wilcox, Richard E. Cooper, Donald B. Rogers, D. A. Sloan, Earl Harvy McCreary and H. W. McCreary were sworn and examined as wit-

nesses on the part of the plaintiff, and J. L. Martin was recalled and further examined.

Whereupon, it was ordered that the trial of the cause be continued to ten o'clock A. M. on December 21, 1929, and the jury retired in the charge of the bailiffs, to be returned into court at that time.

MINUTES OF THE COURT

DECEMBER 21, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

H. W. McCreary, William Barron and A. H. McGill were recalled and further examined and Helen Grant, Hazel Graham, Berdella McKinney, William Steele and Ray DeLama were sworn and examined as witnesses on the part of the plaintiff, and here the plaintiff rests.

Motions to dismiss the indictment as to each defendant were made by the counsel for the respective defendants, which motions were by the Court denied as to all except the defendant Jimmie Ryan whose motion was taken under advisement. Counsel for the respective defendants reserved exceptions to the Court's order denying the motions and exceptions were duly allowed to each.

MINUTES OF THE COURT

DECEMBER 23, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

The Court at this time announced his decision on the motion of the defendant Jimmie Ryan for a dismissal, denying said motion. Exceptions to the order were allowed said defendant.

Upon request of the defendants' counsel A. E. McGill, R. E. Cooper and Donald Rogers were recalled for further cross examination.

Whereupon, Messrs. Turner, Nuzum & Nuzum renewed the motion to dismiss as to the defendants represented by them, which motion was again denied by the Court.

After a statement of the defense by Messrs. C. H. Potts, N. D. Wernette, William Reed, George T. Walker and Richard Nuzum, of counsel for the defendants, Henry Foss, Dr. D. E. Keys, Charles Ristau, John Wheatley, George Huston, Arthur J. Harwood, J. L. Martin, Charles Anderson and Joseph Speck were sworn and examined as witnesses on the part of the defendants.

MINUTES OF THE COURT

DECEMBER 24, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon the trial of the cause was resumed before the Court and Jury.

Waino Pikkerainen, Agnes West, John Thompson, Milford Gardner, Roy Appleton, Herman Arbelius, Mike Kennedy, Gust Aro, Babe Kelly, and Mona McDonald were sworn and examined as witnesses on the part of the defendants.

MINUTES OF THE COURT

DECEMBER 26, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

Charles K. Cartwright, John Murphy, C. E. Wethered, H. W. Ingals, J. B. Newberry, J. B. Wilcox, Mrs. John F. Gearon, Mrs. Della Taylor, John F. Gearon, Joe Goggin, M. M. Patterson, Mrs. Sarah Gearon, G. Halverson, Lucile Anderson, Alice Stevens, Thomas Campbell, Norman Ebbley, Arthur Britton, Charles A. Driscoll, Walter Frank, John W. Murphy, Ramsey M. Walker, Harry L. Day, Milton J. Flohr, Dr. E. R. Nason, A. H. Featherstone, Alex D.

Wallace, J. L. Martin, Roy Smith, Wilbur M. Disbrow, Louis Engebretsen, Jack Malloy, Charles Fond, S. S. Dundlach, R. E. Weniger and Charles J. Bloom were sworn and examined as witnesses on the part of the defendants.

MINUTES OF THE COURT

DECEMBER 27, 1929

The Government's counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

Charles Bloom and R. E. Weniger were recalled and further examined as witnesses on the part of the defendants, and here the defendants rest.

On rebutal Walter C. Clark and Ray Sheridan were sworn and examined and here both sides close.

Motions for instruction to the jury to return a verdict of not guilty were made on behalf of each defendant by his or her counsel. All of said motions were denied by the Court, exceptions being allowed each defendant.

The opening argument before the Jury was made by W. H. Langroise, Assistant District Attorney, on the part of the Government, and the cause was argued on the part of the defendants by C. H. Potts, Esquire.

The jury was committed to the charge of the bailiffs and further trial was continued to ten o'clock A. M. on December 28, 1929.

MINUTES OF THE COURT

DECEMBER 28, 1929

The Government's Counsel, the defendants, and the defendants' counsel being present, the Jury was returned into court by the bailiffs. Whereupon, the trial of the cause was resumed before the Court and Jury.

The cause was argued before the jury by Messrs. George T. Walker, W. T. Reed, O. J. Bandolin, N. D. Wernette and R. W. Nuzum on the part of the defendants, and the closing argument on the part of the plaintiff was made by H. E. Ray, District Attorney.

The Court instructed the jury and placed them in the charge of a bailiff duly sworn, and they retired to consider of their verdict.

Exceptions were taken to portions of the Court's instructions to the jury by Messrs. Turner, Nuzum & Nuzum and by Messrs. Gray & Potts and N. D. Wernette, on behalf of the defendants represented by them.

It was ordered that the Court recess subject to call of the Jury.

MINUTES OF THE COURT

DECEMBER 29, 1929

The District Attorney, the defendants and the defendants' counsel being present, the Jury was returned into court, and upon being called all were found present.

The Court asked the Jury if they had agreed upon a

verdict, and they, through their foreman, replied that they had, and thereupon presented to the Court their written verdict, which was in the words following, to-wit:

(Title of Court and Cause)

VERDICT

“We, the jury, in the above entitled cause find the defendant R. E. Weniger, guilty as charged in the Indictment.

We further find the defendant Charles Bloom guilty as charged in the Indictment.

*****”

Ten o'clock A. M. on Tuesday, December 31, 1929, was fixed as time for pronouncing judgment and the following named defendants were permitted to go on their bonds to appear at that time: Charles Anderson, Charles Bloom, Henry Foss, Arthur J. Harwood, George Huston, Harcourt Morphy, Waino Pikkerainen, Charles Ristau, Joseph Speck, R. E. Weniger, F. O. Welch and John Wheatley.

(Title of Court and Cause)

JUDGMENT

Comes now the District Attorney with the defendants R. E. Weniger, Charles Bloom, F. O. Welch, Harcourt Morphy, Arthur J. Harwood, John Wheatley, George Huston, Charles Ristau, Henry Foss, Agnes

West, Babe Kelly, Bertha Strom, Mona McDonald, Joseph Speck, John Malloy, William E. Coughlin, Charles Fond, Charles Anderson, Waino Pikkerainen, Walter Johnson, Mike Kennedy, Roy Appleton, Milford Gardner, Herman Arbelius and their counsel into court, this being the time fixed for judgment herein.

Each defendant was asked by the Court if he or she had any legal cause to show why judgment should not be pronounced, to which each replied that he or she had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, it is adjudged upon the verdict of the Jury that the defendants R. E. Weniger, Charles Bloom, F. O. Welch, Harcourt Morphy, Arthur J. Harwood, John Wheatley, George Huston, Charles Ristau, Henry Foss, Agnes West, Babe Kelly, Bertha Strom, Mona McDonald, Joseph Speck, John Malloy, William E. Coughlin, Charles Fond, Charles Anderson, Waino Pikkerainen, Walter Johnson, Mike Kennedy, Roy Appleton, Milford Gardner and Herman Arbelius, and the defendant Charles Hartley upon his plea are guilty of conspiracy to commit offences against the United States, as charged in the indictment.

It is further adjudged that the defendant R. E. Weniger pay a fine of \$1000.00 and be confined in the United States Penitentiary at McNeil Island, Washington for a term of two years. In default of payment of said fine defendant to be imprisoned in said peni-

tentiary until the payment thereof or until released by due process of law.

* * * * *

It is further adjudged that the defendant Charles Bloom be confined for a term of fifteen months in the United States Penitentiary at McNeil Island, Washington.

* * * * *

The defendants R. E. Weniger and Charles Bloom were granted to February 1, 1930, in which to prepare and file assignment of errors, and Monday, February 3, 1930, was fixed as time for hearing on motions for a new trial. Bonds on appeal were fixed as follows:

R. E. Weniger, Arthur J. Harwood, John Wheatley, George Huston, each \$5000.00; Charles Bloom, Charles Ristau, Henry Foss, F. O. Welch and Harcourt Morphy, each \$3000.00.

* * * * *

The defendants R. E. Weniger and Charles Bloom were released upon their bonds, pending appeal, and each of the other said defendants was committed to the custody of the United States Marshal to be by him delivered to the custody of the warden or sheriff of the prison to which he was committed.

(The foregoing is a true copy of the judgment entered in the above entitled case as pertains to the defendants R. E. Weniger and Charles Bloom.

Clerk)

R. E. Weniger and Charles Bloom

(Title of Court and Cause)

PETITION FOR REVERSAL

Filed December 31, 1929

Comes now the defendant, R. E. Wenigar, and prays for a reversal of the judgment of the District Court of the United States for the Northern Division of the District of Idaho in that certain criminal action Numbered 3035, in which judgment was rendered against this petitioning defendant on the verdict of a jury on the 29th day of December, 1929, in the said District Court.

TURNER, NUZUM & NUZUM,
O. J. BANDELIN,
Attorneys for Defendant Winegar.

Copy received December 31, 1929

H. E. RAY,
United States Attorney

(Title of Court and Cause)

PETITION FOR REVERSAL

Filed December 31, 1929

Comes now the defendant, Charles Bloom, and prays for a reversal of the judgment of the District Court of the United States for the Northern Division of the District of Idaho in that certain criminal action Numbered 3035, in which judgment was rendered against

this petitioner defendant on the verdict of a jury on the 29th day of December, 1929, in the said District Court.

TURNER, NUZUM & NUZUM,
O. J. BANDELIN,

Attorneys for Defendant Bloom.

Copy received December 31, 1929.

H. E. RAY,

United States Attorney

(Title of Court and Cause)

PETITION FOR APPEAL

Filed December 31, 1929

To the Honorable J. Stanley Webster, District Judge:

The above named R. E. Weniger, feeling aggrieved by the judgment rendered and entered in the above entitled cause on the 31st day of December, 1929, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the laws of said court in such cases made and provided, and your petitioner respectfully presents herewith his as-

signment of errors and prayer for reversal.

R. E. WENIGER,

Petitioner.

TURNER, NUZUM & NUZUM,
605 Columbia Building, Spokane,
Washington.

O. J. BANDELIN,
Sandpoint, Idaho.

Attorneys for Petitioner.

Copy received December 31, 1929.

H. E. RAY,

United States Attorney

(Title of Court and Cause)

PETITION FOR APPEAL

Filed December 31, 1929

To the Honorable J. Stanley Webster, District Judge:

The above named Charles Bloom, feeling aggrieved by the judgment rendered and entered in the above entitled cause on the 31st day of December, 1929, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said

judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the laws of said court in such cases made and provided, and your petitioner respectfully presents herewith his assignment of errors and prayer for reversal.

CHARLES BLOOM,

Petitioner.

TURNER, NUZUM & NUZUM,
605 Columbia Building, Spokane,
Washington.

O. J. BANDELIN,
Sandpoint, Idaho.

Attorneys for Petitioner.

Copy received December 31, 1929.

H. E. RAY,

United States Attorney

(Title of Court and Cause)

SUPERSEDEAS ORDER

Filed December 31, 1929

This cause coming on to be heard this 31st day of December, 1929, upon the application of the appellant, R. E. Winegar, for an appeal to the Circuit Court of Appeals of the United States, and said appeal having been allowed:

IT IS ORDERED that the same shall operate as a supersedeas, the said appellant having executed a bond in the sum of \$5000.00 as provided by law, and the Clerk is hereby directed to stay the mandate of the District Court of the United States for the Northern Division of the District of Idaho until the further order of the court.

J. STANLEY WEBSTER,
Judge.

(Title of Court and Cause)

SUPERSEDEAS ORDER

Filed December 31, 1929

This cause coming on to be heard this 31st day of December, 1929, upon the application of the appellant, Charles Bloom, for an appeal to the Circuit Court of Appeals of the United States, and said appeal having been allowed:

IT IS ORDERED that the same shall operate as a supersedeas, the said appellant having executed a bond in the sum of \$3000.00, as provided by law, and the Clerk is hereby directed to stay the mandate of the District Court of the United States for the Northern Division of the District of Idaho until the further order of the court.

J. STANLEY WEBSTER,
Judge.

(Title of Court and Cause)

ORDER EXTENDING TIME
ASSIGNMENTS OF ERROR

Filed December 31, 1929

The necessity therefore appearing to the court,

It is hereby ordered that the defendant R. E. Weniger may have and is hereby granted to and including February 1, 1930, in which to prepare, serve and file his assignments of error on appeal in the above entitled cause.

Dated this 31st day of December, 1929.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

ORDER EXTENDING TIME
ASSIGNMENTS OF ERROR

Filed December 31, 1929

The necessity appearing therefore to the court,

It is hereby ordered that the defendant Charles Bloom may have and is hereby granted to and including February 1, 1930, in which to prepare, serve and file his assignments of error on appeal in the above entitled cause.

Dated this 31st day of December, 1929.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

**MOTION TO EXTEND TIME TO FILE
BILL OF EXCEPTIONS.**

Filed December 31, 1929

Come now the defendants R. E. Winegar and Charles Bloom, and move the court for an order extending the time within which to serve and file their bill of exceptions herein to and including the 3rd day of March 1930.

**TURNER, NUZUM & NUZUM,
O. J. BANDELIN,**

Attorneys for Defendants R. E.
Winegar and Charles Bloom.

(Title of Court and Cause)

**ORDER EXTENDING TIME TO FILE
BILL OF EXCEPTIONS**

Filed December 31, 1929

This cause coming on for hearing upon the motion of the defendant R. E. Winegar for an order extending the time within which to serve and file bill of exceptions to and including March 3, 1930, and the court having considered said motion and being advised in the premises:

IT IS ORDERED that said motion be and the same

is hereby granted, and the time hereby extended to and including March 3, 1930 within which defendant R. E. Winegar may file bill of exceptions herein.

Done in open Court this 31st day of December, 1929.

J. STANLEY WEBSTER,
Judge.

(Title of Court and Cause)

ORDER EXTENDING TIME TO FILE

BILL OF EXCEPTIONS

Filed December 31, 1929

This cause coming on for hearing upon the motion of the defendant Charles Bloom for an order extending the time within which to serve and file bill of exceptions to and including March 3, 1930, and the court having considered said motion and being advised in the premises:

IT IS ORDERED that said motion be and the same is hereby granted, and the time hereby extended to and including March 3, 1930 within which defendant Charles Bloom may file bill of exceptions herein.

Done in open Court this 31st day of December, 1929.

J. STANLEY WEBSTER,
Judge.

(Title of Court and Cause)

PETITION FOR APPEAL OF
CHARLES BLOOM

Filed January 20, 1930

To the Honorable J. Stanley Webster, District Judge:

The above named Charles Bloom, feeling aggrieved by the judgment rendered and entered in the above entitled cause on the 31st day of December, 1929, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the laws of said court in such cases made and provided, and your petitioner respectfully presents herewith his assignment of errors and prayer for reversal.

CHARLES BLOOM,

Petitioner.

TURNER, NUZUM & NUZUM,
605 Columbia Building, Spokane,
Washington.O. J. BANDELIN,
Sandpoint, Idaho

Attorneys for Petitioner.

Copy received Jan. 20, 1930

H. E. RAY,
United States Attorney

(Title of Court and Cause)

PETITION FOR APPEAL OF

R. E. WENIGER

Filed January 20, 1930

To the Honorable J. Stanley Webster, District Judge:

The above named R. E. Winegar, feeling aggrieved by the judgment rendered and entered in the above entitled cause on the 31st day of December, 1929, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the laws of said court in such cases made and provided, and your petitioner respectfully presents herewith his assignment of errors and prayer for reversal.

R. E. WINEGAR,

Petitioner.

TURNER, NUZUM & NUZUM,
O. J. BANDELIN,
Attorneys for Petitioner.

Copy received Jan. 20, 1930

H. E. RAY,
United States Attorney.

(Title of Court and Cause)

ORDER ALLOWING APPEAL

Filed January 20, 1930

On motion of Turner, Nuzum & Nuzum and O. J. Bandelin, counsel for defendant, R. E. Weniger:

IT IS HEREBY ORDERED that the appeal to the Circuit Court of Appeals of the United States from the judgment entered heretofore and filed herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits and all proceedings be forthwith transmitted to said Circuit Court of Appeals.

IT IS FURTHER ORDERED that the bond on appeal be fixed at five thousand dollars (\$5000.00), the same to act as a supersedeas bond and also for costs and damages on appeal, and that the supersedeas bond and bond on appeal heretofore filed and approved by the court on December 31, 1929, be accepted as a supersedeas bond and bond on appeal, and to remain in full force and effect.

Done in open Court this 16th day of January, 1930.

J. STANLEY WEBSTER,

Judge.

Copy received January 20, 1930.

H. E. RAY,

United States Attorney.

(Title of Court and Cause)

ORDER ALLOWING APPEAL

Filed January 20, 1930

On motion of Turner, Nuzum & Nuzum and O. J. Bandelin, counsel for defendant, Charles Bloom:

IT IS HEREBY ORDERED that the appeal to the Circuit Court of Appeals of the United States from the judgment entered heretofore and filed herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits and all proceedings be forthwith transmitted to said Circuit Court of Appeals.

IT IS FURTHER ORDERED that the bond on appeal be fixed at three thousand dollars (\$3000.00), the same to act as a supersedeas bond and also for costs and damages on appeal, and that the supersedeas bond and bond on appeal heretofore filed and approved by the court on December 31, 1929, be accepted as a supersedeas bond and bond on appeal, and to remain in full force and effect.

Done in open Court this 16th day of January, 1930.

J. STANLEY WEBSTER,

Judge.

Copy received January 20, 1930.

H. E. RAY,

United States Attorney.

(Title of Court and Cause)

BOND ON APPEAL

Filed December 31, 1929

KNOW ALL MEN BY THESE PRESENTS:

That we, R. E. Weniger as principal, and The Aetna Casualty & Surety Company of Hartford, Conn., as surety, of the County of Shoshone, State of Idaho, are held and firmly bound unto the United States in the sum of \$5000.00 lawful money of the United States, to be paid to it and its successors, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, administrators and successors by these presents.

Sealed with our seals and dated this 31st day of December, 1929.

WHEREAS, the above named R. E. Winiger has prosecuted an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, to reverse the judgment of the District Court of the United States

for the Northern Division of the District of Idaho in the above entitled cause;

NOW THEREFORE, the condition of this obligation is such that if the above named Weniger shall prosecute his said appeal to effect, and answer all costs, if he fail to make good his plea, and abide by and perform the sentence of the law imposed upon him, then this obligation shall be void; otherwise to remain in full force and effect.

R. E. WENIGER,

(SEAL)

Principal.

THE AETNA CASUALTY &
SURETY CO.

(SEAL)

By HERMAN J. ROSSI,
Resident Vice President
Surety

Attest: OSCAR W. NELSON,
Resident Assistant Secretary.

Approved this 31st day of December, 1929.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

BOND ON APPEAL

Filed December 31, 1929

KNOW ALL MEN BY THESE PRESENTS:

That we, Charles J. Bloom, as principal, and The

Aetna Casualty & Surety Co., of Hartford, Conn., as surety, of the County of Shoshone, State of Idaho, are held and firmly bound unto the United States in the sum of \$3000.00 lawful money of the United States, to be paid to it and its successors to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, administrators and successors by these presents.

Sealed with our seals and dated this 31st day of December, 1929.

WHEREAS, the above named Charles J. Bloom has prosecuted an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, to reverse the judgment of the District Court of the United States for the Northern Division of the District of Idaho in the above entitled cause;

NOW THEREFORE, the condition of this obligation is such that if the above named Bloom shall prosecute his said appeal to effect, and answer all costs, if he fail to make good his plea, and abide by and perform the sentence of the law imposed upon him, then this obligation shall be void; otherwise to remain in full force and effect.

CHARLES J. BLOOM,

(SEAL)

Principal

THE AETNA CASUALTY &
SURETY CO.

(SEAL)

By HERMAN J. ROSSI,
Resident Vice-President
Surety

Attest: OSCAR W. NELSON,
Resident Assistant Secretary.

Approved this 31st day of December, 1929.

J. STANLEY WEBSTER,
Judge.

(Title of Court and Cause)

NOTICE OF APPEAL

Filed December 31, 1929

Comes now R. E. Winegar, defendant in the above entitled case, and enters his appeal from the final judgment of this Honorable Court, rendered in the above case December 31, 1929, to the Circuit Court of the United States for the Ninth Circuit, returnable before said Court at San Francisco, California on the first day of the term of said court, hereafter to be held.

The United States of America and Honorable H. E. Ray, District Attorney of the United States for the District of Idaho, attorney of record, will please take notice of said appeal, the same being taken under the act of Congress, approved January 31, A. D. 1928, entitled "An act in reference to writs of error."

R. E. WINEGAR,
Defendant.

TURNER, NUZUM & NUZUM,
O. J. BANDELIN,
Attorneys for Defendant Winegar.

Copy received December 31, 1929.

H. E. RAY,
United States Attorney.

(Title of Court and Cause)

NOTICE OF APPEAL

Filed December 31, 1929

Comes now Charles Bloom, defendant in the above entitled cause, and enters his appeal from the final judgment of this Honorable Court, rendered in the above case December 31, 1929, to the Circuit Court of the United States for the Ninth Circuit, returnable before said Court at San Francisco, California on the first day of the term of said court, hereafter to be held.

The United States of America and Honorable H. E. Ray, District Attorney of the United States for the District of Idaho, attorney of record, will please take notice of said appeal, the same being taken under the act of Congress, approved January 31, A. D. 1929, entitled "An act in reference to writs of error."

CHARLES BLOOM,

By TURNER, NUZUM & NUZUM,
O. J. BANDELIN,

Attorneys for Defendant Charles
Bloom.

Copy received December 31, 1929.

H. E. RAY,
United States Attorney.

(Title of Court and Cause)

CITATION

Filed December 31, 1929

UNITED STATES OF AMERICA, ss.

To the United States and to H. E. Ray, District Attorney of the United States, and attorney of record in the above-entitled cause:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States for the Ninth Circuit, to be held at the City of San Francisco, California, on the 31st day of January, 1930, pursuant to an order allowing an appeal, filed and entered in the Clerk's office of the District Court of the United States for the Northern Division of the District of Idaho from a final judgment signed, filed and entered on the 31st day of December, 1929, in that certain criminal action Numbered 3035, wherein the United States of America is plaintiff and the above named R. E. Winegar is defendant, and appellant, to show cause, if any there be, why the judgment rendered against the said defendant and appellant, as in said order allowing the appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

WITNESS the Honorable J. Stanley Webster, United States Judge for the Eastern District of the State of Washington, sitting in the said court in said case, and presiding in said court under the order of the presiding judge of the Circuit Court of Appeals for the Ninth Circuit this 31st day of December, 1929, and of the Independence of the United States 153 years.

J. STANLEY WEBSTER,
United States District Judge.

Copy received December 31, 1929.

H. E. RAY,
United States Attorney.

(Title of Court and Cause)

CITATION

Filed December 31, 1929

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J. STANLEY WEBSTER,
United States District Judge.

Copy received December 31, 1929.

H. E. RAY,
United States Attorney.

(Title of Court and Cause)

ASIGNMENT OF ERRORS

(Filed January 20, 1930)

Now come the defendants, R. E. Winegar, and Charles Bloom, and each of them, in the above entitled cause, and file the following assignments of error, upon which they, and each of them, will rely upon their, and each of their prosecution of the appeal in the above entitled cause from the judgment made by this Honorable Court on the 31st day of December, 1929:

1. That the United States District Court for the District of Idaho, Northern Division erred in overruling the plea in abatement interposed by the defendants and appellants, and each of them, to the indictment returned and filed in said cause.

2. The court erred in overruling the objection made by these defendants to the testimony of one Needham, as follows:

Q. Did you confer with Harwood?

A. I met Wheatley later, and he asked me the same thing.

MR. NUZUM: I represent Sheriff Winegar, and I object to that as hearsay, incompetent, irrelevant and immaterial. I do not know that any talk he had with Wheatley would—

THE COURT: Is Wheatley included here?

MR. RAY: Yes, he is one of the councilmen of the Village of Mullan.

THE COURT: Included in this indictment?

MR. RAY: Yes.

THE COURT: Overruled.

MR. NUZUM: Exception.

3. The court erred in overruling the objection made by these defendants to the testimony of one Needham, as follows:

Q. And after you put in your application state what, if anything, happened?

A. At the meeting of the second of May I was selected.

MR. RAY: Q. What happened at that meeting, Mr. Needham?

MR. NUZUM: May this all be considered as going in under objection? I cannot see that this has got anything to do with any conspiracy.

THE COURT: The objection is overruled.

MR. NUZUM: May we have an exception?

THE COURT: Yes sir. I think it may be understood now so far as this court is concerned that each counsel may consider it understood that an exception is reserved and allowed to all adverse rulings.

4. The court erred in admitting in evidence Plaintiff's Exhibit No. 1; Exhibit No. 1 being offered and the following having taken place:

Q. Handing you now Plaintiff's Exhibit No. 1 for identification, Mr. Needham, I will ask you if that is the list to which you have just made reference.

A. Yes, sir, that is the list.

MR. RAY: We offer that in evidence, your honor.

MR. POTTS: We object to it on the grounds it is incompetent and immaterial, not the best evidence, and that no accounting has been made of the original list. This is a typewritten copy.

THE COURT: And the objection is overruled.

MR. WALKER: The same objection.

MR. NUZUM: On behalf of Bloom and Winegar, I desire to object as incompetent and immaterial. It has got to be connected up.

THE COURT: Of course, counsel understands that where there is a large number of defendants on trial that testimony may be competent as to a particular defendant and not competent as to others, and the court will have to take care of that in its instructions to the jury. If the testimony is competent as against any defendant, of course, it has to go before the jury.

MR. NUZUM: I understand that, your honor, and I do not want it to be deemed that I had waived it, that is the only reason I suggested it to your honor.

5. The court erred in overruling the motion to strike the answer of the witness Needham as follows:

A. That indicated the amount that was collected for running a gambling game.

Q. At the Central Hotel?

MR. NUZUM: What was that?

A. Gambling.

MR. RAY: Q. Who was running the Central Hotel at the time you went in office?

A. Sir Forsythe.

MR. POTTS: Just a moment, if that is all there is

to that, I move that the answer with respect to it be stricken out as immaterial and irrelevant, having no bearing on the charge in this case.

THE COURT: Motion is denied.

6. The court erred in denying the motion to strike the testimony of the witness Needham with respect to Charley Hartley, as follows:

MR. RAY: Q. The next one appearing on here is "Mullen Pool Hall, \$25.00." What does that indicate?

A. Well, that is also for gambling.

THE COURT: I did not hear that.

A. That was for gambling also.

MR. RAY: Q. And who was running the pool hall at the time?

A. Charley Hartley.

Q. Charles Hartley?

MR. POTTS: I make the same motion with respect to that, your honor.

THE COURT: The same ruling.

7. The court erred in refusing to strike the testimony of the witness Needham with reference to Mrs. Burns, Noodle Parlors, Mucker's Club, Fern Hotel Apartments, and Bertha Strom, which is as follows:

Q. The next is "Mrs. Burns, Noodle Parlors, \$25.00 and \$15.00 each", what does that mean?

A. That means twenty-five for Mrs. Burns. She is supposed to be the landlady in the case, and fifteen dollars each for her girls.

Q. What kind of a house is that?

A. A house of prostitution.

Q. "Mucker's Club \$25.00," what does that indicate?

A. That is for gambling.

Q. "Fern Hotel Apartments, \$25.00 and \$15.00 each", what does that mean?

A. That was for prostitution.

Q. Who was operating that at the time you went in office.

A. Bertha Strom.

Q. One of the defendants named in this case?

MR. BANDELIN: At this time the defendant objects to any testimony along that line and asks that it be stricken on the ground it does not prove or tend to prove any matter alleged in this indictment.

THE COURT: The motion is denied.

8. The court erred in refusing to strike the testimony of the witness Needham with reference to the Marble Front, which is as follows:

Q. All right, sir. "Marble Front, \$25.," what does that indicate?

A. Marble Front, that was for gambling.

Q. "Marble Front Apartments, Harwood's, \$25.00 and \$15.00 each, at 218 Earl Avenue," what does that indicate?

A. That was for prostitution.

Q. Who was operating that place when you went into office, if you remember?

A. Babe Kelly.

Q. One of the defendants in this case?

A. Yes sir.

MR. BANDELIN: I move that that testimony be stricken on the grounds heretofore stated.

THE COURT: Denied.

9. The court erred in refusing to strike the testimony of the witness Needham with reference to the Yellowstone Cigar Store, as follows:

Q. "Yellowstone Cigar Store, \$35.00," what does that indicate?

A. That is for gambling.

Q. Who was operating that at the time you went in office?

A. Charles Hartley and Gus Aro.

Q. The defendants named in this case?

MR. BANDELIN: At this time I ask that that be stricken on the ground it does not prove or tend to prove any issues charged in this case.

THE COURT: Motion is denied.

10. The court erred in admitting in evidence Plaintiff's Exhibit No. 2, as follows:

Mr. RAY: I now offer Plaintiff's Exhibit No. 2 in evidence. Counsel have examined it.

Mr. NUZUM: On behalf of Winegar and Bloom, I object to it as incompetent, irrelevant and immaterial.

THE COURT: The objection to the introduction will be overruled. I will take care of it so far as it may affect anyone who is not included in it.

11. The court erred in overruling the objection of

the defendants to the testimony of the witness Needham, as follows:

Q. Now, why did you present this list each month just to the particular individuals rather than to the village generally as would indicate from the heading of this list, Mr. Needham?

MR. NUZUM: I think that is immaterial, if your honor please.

THE COURT: Overruled.

12. The Court erred in overruling the objections of defendants to the testimony of the witness Needham, as follows:

Q. Very well. With respect to Charles Fond, did you have a conversation with Charles Fond on February 24th, relative to this whiskey business in Mullan?

A. Well, it was sometime around the 24th that—

Q. Where was that—in Mullan?

A. It was in Mullan, but I am not certain whether it was in what is known as the Mullan Pool Hall or the Stockholm, and he told me at that time—

MR. NUZUM: Objected to. I think it is incompetent.

THE COURT: The objection will be overruled.

13. The court erred in overruling the objection of defendants to the testimony of the witness McGill, as follows:

Q. And when was this talk with Mr. Bloom?

A. It was a few days after election.

Q. A few days after election?

A. Yes sir.

THE COURT: In 1928?

A. Yes sir.

MR. RAY: Q. Very well, now then, go ahead and state.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

14. The court erred in overruling the objection of defendants to the testimony of the witness McGill, as follows:

MR. RAY: Q. What had you done?

MR. NUZUM: I object as immaterial what he had done in election.

THE COURT: What he had done in connection with Bloom he may state.

A. I just donated my car to the boys for service to help them out.

MR. NUZUM: Now, if your Honor please, I move to strike that. Bloom was not a candidate for office.

THE COURT: Denied.

MR. NUZUM: Exception.

15. The court erred in admitting in evidence the testimony of the witness McGill with reference to election, as follows:

MR. RAY: Q. Was Mr. Bloom present on election day at Mullan?

A. Yes sir.

Q. Did he have anything to do with the use of your car?

A. Yes sir.

MR. NUZUM: All of this with reference to election goes in under my objection, if your Honor please. I object to it as incompetent, irrelevant and immaterial. It does not make any difference what anybody does with reference to a state election.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

16. The court erred in overruling the objection of defendants to the testimony of the witness McGill as follows:

Q. What if anything did you do relative to banners or posters on your car?

MR. NUZUM: Just a minute, I object to that as incompetent, irrelevant and immaterial. That is not a conversation with the defendant.

THE COURT: Objection overruled.

MR. NUZUM: Exception.

17. The court erred in sustaining the objection to the question of the witness McGill on cross-examination, as follows:

Q. And you have stated to numerous people that you did not care what became of the other people but you wanted to cinch Weniger and Bloom, haven't you?

MR. RAY: Just a moment, I object to the question.

THE COURT: The objection is sustained.

MR. NUZUM: Exception. That is all.

18. The court erred in overruling the objection of the defendants to the introduction of Plaintiff's Exhibit No. 4 (which are pages 123, 124, 125, 126 of said exhibit), as follows:

Q. State generally what that ordinance pertains to.

A. That ordinance regulates the income from licenses.

Q. Occupational Tax Ordinance?

A. Yes.

MR. RAY: We offer in evidence, pages 123, 124, 125 and 126, of plaintiff's exhibit 4 for identification.

THE COURT: That being all the pages containing that ordinance?

MR. RAY: Yes.

MR. POTTS: I object to the reception of the record as incompetent, irrelevant and immaterial, and represents legislative action of the Trustees of the Village of Mullan.

THE COURT: Overruled.

MR. NUZUM: On behalf of the defendant Wingar, I object to it as incompetent, irrelevant and immaterial for any purpose at this stage.

THE COURT: Overruled.

MR. NUZUM: And on behalf of the defendant Bloom I make the general objection that it is incompetent, irrelevant and immaterial.

THE COURT: Overruled.

19. The court erred in overruling the objections of defendants to the introduction of page 121 of Plaintiff's Exhibit No. 4, being Ordinance No. 103 referred to in

Section 36 of Ordinance No. 105 of the Village of Mullan, as follows:

MR. RAY: We offer in evidence Page 121 of plaintiff's exhibit No. 4 for identification.

MR. POTTS: We object to this offer and to the reception in evidence of this exhibit on the ground it is incompetent, irrelevant and immaterial, and before completing my objection, your Honor, I wish to ask the witness a question in regard to it.

THE COURT: Very well.

MR. POTTS: Q. When was this ordinance adopted by the Board of Village Trustees of Mullan?

A. In 1922, but I cannot call the date without looking it up.

MR. POTTS: Q. Will you look at the record, please.

A. The 6th day of September, 1922.

MR. POTTS: And was it superseded and repealed by Ordinance No. 105? Is that the ordinance referred to?

A. That is the ordinance referred to, but I did not notice that in reading that ordinance a minute or two ago that it did repeal that. If it did, it so states in Ordinance No. 105.

MR. POTTS: Q. This is the ordinance No. 103 referred to in section 36 of ordinance No. 105?

A. Yes sir.

MR. NUZUM: On behalf of the defendants Weniger and Bloom and Anna Tornberg, I object to this as incompetent, irrelevant and immaterial, and I rather

gather from what Mr. Martin said that this ordinance has now been repealed. It was repealed by ordinance No. 105. And it seems to me it is pretty remote, if your Honor please, 1922. The date of the conspiracy is 1924. I think it was before Mr. Weniger even became a sheriff of Shoshone County. He was elected he tells me in 1923. This ordinance was passed long prior to his election and has been repealed, and it would be incompetent and immaterial in any event as against either Mr. Weniger or Mr. Bloom.

20. The court erred in admitting in evidence page 247 as No. 5-A, of plaintiff's Exhibit No. 5, as follows:

MR. RAY: We offer in evidence Page 247 as No. 5-A, of plaintiff's exhibit No. 5.

MR. NUZUM: On behalf of the defendants, Weniger and Bloom, I object to it as incompetent, irrelevant and immaterial and that any action by a village board or a municipality is within the jurisdiction and rights of that board and can be no basis for the violation of any Federal statute. On behalf of the defendant Anna Tornberg I object as incompetent, irrelevant and immaterial.

THE COURT: And the objections will be overruled.

21. The court erred in overruling defendants' objection to the last three lines of Page 245 and the entire page of 246 of Plaintiff's Exhibit No. 5-B, as follows:

MR. RAY: We offer in evidence the last three lines of Page 245 and the entire page 246 as plaintiff's exhibit

bit No. 5-B.

MR. NUZUM: I object to this as incompetent, irrelevant and immaterial. The ordinance passed was ordinance No. 106.

MR. RAY: Designated as that.

MR. NUZUM: It is so designated and I assume that that is what it is, and the ordinance referred to here is 105. I think it is incompetent, irrelevant and immaterial generally on behalf of the defendants I represent and showing on its face that it is a different ordinance than the one that was passed in February.

THE COURT: The objections will be overruled.

MR. NUZUM: Exception.

THE COURT: It will be admitted in evidence.

22. The court erred in admitting in evidence Plaintiff's Exhibit No. 5-C, as follows:

MR. RAY: I offer in evidence Government's exhibit No. 5-C, page 238, beginning with the third paragraph, and including the entire page.

MR. NUZUM: In behalf of my clients, I desire to object to any of these records of the Village of Mullan—I think they are competent, but I make this suggestion that there is a lot of stuff in there, such as passing on bills, and so forth, that I do not see can have anything to do with this transaction—contract with the electric company, and all that stuff, simply encumbers the record.

MR. RAY: If counsel will permit, I shall only read that portion of it—this is offered only for the purpose of showing the election of certain defendants as officials

of the Village of Mullan.

THE COURT: If that is the purpose, it will be admitted.

23. The court erred in admitting in evidence Plaintiff's Exhibit 5-D, as follows:

Q. Calling your attention to page 267, plaintiff's exhibit 5, for identification, I will ask you generally what that purports to be?

A. That is a record of the proceedings of the Village Trustees of Mullan, May 4th, 1925.

MR. RAY: I offer in evidence as plaintiff's exhibit 5-D, page 267, being—having to do with the election returns of the Village Trustees.

MR. NUZUM: For the same purpose?

MR. RAY: Yes.

MR. NUZUM: On the part of Mr. Bloom and Mr. Weniger, I object to it as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

24. The court erred in admitting in evidence Plaintiff's Exhibit 5-E, being page 342 of Plaintiff's Exhibit No. 5, as follows:

MR. RAY: I offer in evidence page 342, plaintiff's exhibit No. 5 designated as Plaintiff's Exhibit No. 5-E pertaining to the election of the trustees of the Village of Mullan.

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of Mr. Winegar and Mr. Bloom.

THE COURT: Overruled. The exhibits will be

admitted.

25. The court erred in overruling defendants' objections to Exhibit No. 5-F, as follows:

MR. RAY: We offer in evidence as Plaintiff's Exhibit 5-F, that portion of page 588, of the minutes of the Village of Mullan having reference to the election returns had May 6, 1929.

MR. NUZUM: The same objection on behalf of Winegar and Bloom.

THE COURT: Overruled. The exhibit may be admitted.

26. The court erred in overruling defendants' objections to the admission in evidence of Plaintiff's Exhibit No. 5-G, as follows:

MR. RAY: We offer in evidence as plaintiff's exhibit No. 5-G, that portion of the minutes of the Village of Mullan of December 7th, 1925, having to do with the appointment of a Chief of Police.

MR. POTTS: I object to that as incompetent, irrelevant and immaterial.

MR. NUZUM: The same objection.

THE COURT: The objection will be overruled and the exhibit admitted.

27. The court erred in overruling the objection of the defendants to the following question:

MR. RAY: I may state to the court and counsel that I desire to show the members in attendance at the Village Board meeting from May 2nd, 1927, through to November, 1928, during the period in which Chief of Police Needham was Chief of Police, and I ask if it

is necessary to introduce—if counsel will object to the formal reading from the minutes the names of those present, or will you insist upon introducing every meeting.

MR. NUZUM: I have no objection to the manner, but I desire to make the same objection, incompetent, irrelevant and immaterial.

THE COURT: The objection on other grounds will be overruled. I understand there is no objection to the manner of proving who was present. You may read them to the jury.

28. The court erred in overruling the objection of the defendants to the admission of Plaintiff's Exhibit 6-A to 6-J, both inclusive, as follows:

MR. RAY: I renew the offer of plaintiff's Exhibit 6-A to 6-J, both inclusive.

MR. NUZUM: On behalf of the defendants I represent I object as incompetent, irrelevant and immaterial.

THE COURT: The objections will be overruled and the exhibits admitted.

29. The court erred in overruling the objection of the defendants to the admission of Exhibit No. 7, as follows:

Q. Did you pursue the same practice with respect to plaintiff's exhibit No. 7 that you did with respect to plaintiff's exhibit No. 2 when these slips were delivered to you from month to month.

A. I did.

Q. And deposited the money to your credit as the

treasurer of the Village of Mullan?

A. Yes sir.

Q. In each and every instance?

A. Yes sir.

MR. RAY: We offer in evidence plaintiff's exhibit No. 7.

MR. NUZUM: I object to it as incompetent, irrelevant and immaterial on behalf of the defendants I represent.

THE COURT: The objections will be overruled and the exhibits admitted.

30. The court erred in overruling the objections of the defendants to the admission of Exhibit No. 10 as follows:

MR. RAY: We offer in evidence plaintiff's exhibit No. 10.

MR. POTTS: On behalf of the clients I represent, I object to that as incompetent, irrelevant and immaterial.

MR. NUZUM: On behalf of those I represent, I offer the same objection.

THE COURT: Overruled. It may be admitted.

31. The court erred in overruling the objection of defendants to the admission of Page 393 of Plaintiff's Exhibit No. 5, designated as 5-I, as follows:

MR. RAY: I offer in evidence page 391 of plaintiff's Exhibit No. 5 for identification, same being designated 5-I, showing the members of the village council present at that meeting.

MR. WERNETTE: I object to that as incompe-

tent, irrelevant and immaterial.

MR. NUZUM: The same objection.

THE COURT: Overruled.

32. The court erred in overruling the objection of the defendants to the statement of the witness Martin as to what took place at the meeting of the trustees, as follows:

Q. Before proceeding, does this refresh your memory to the extent that you can tell who was present at this meeting?

A. It has.

Q. Proceed.

A. Who was present?

Q. And what happened?

A. Harwood, Wheatley, Ristau, and—

THE COURT: Huston!

MR. RAY: Huston or Price!

A. Huston was present at that meeting. And Mr. Welch also. I stated—

MR. NUZUM: I object to anything that he stated as incompetent, irrelevant and immaterial.

THE COURT: Overruled. Go ahead.

33. The court erred in overruling the objection of defendants to the testimony of the witness Martin, as follows:

Q. Did you tell them any reason that Hull had given you for that, if he did say anything?

MR. NUZUM: The same objection.

THE COURT: Confine yourself now to what you reported to the members of the board?

A. I told them that Mr. Hull stated that the Government Prohibition Officers were making an investigation of the situation existing in the district, what was being done in that line, and that his advice was that we discontinue that practice.

Q. Thereupon what was done by the members?

MR. NUZUM: The same objection.

THE COURT: Overruled.

34. The court erred in overruling the objections of defendants to the testimony of the witness Martin, as follows:

Q. Thereafter have you issued any soft drink licenses—\$25.00 a month licenses?

MR. NUZUM: Object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

Mr. NUZUM: Exception.

35. The court erred in overruling the objections of the defendants to the reading of Plaintiff's Exhibit No. 5 for identification, as follows:

MR. RAY: At this time we offer to continue reading from the minutes of the village of Mullan, plaintiff's Exhibit 5 for identification, the names of the trustees present at each regular session after December, 1928, up to and including November, 1929.

THE COURT: Showing the names of the members of the board that were present at the several meetings.

MR. RAY: I beg your pardon, sir.

THE COURT: Showing the names of the mem-

bers of the board that were present at the several meetings.

MR. RAY: And the officers of the village?

THE COURT: Yes.

MR. POTTS: We object to that as immaterial and incompetent.

MR. NUZUM: We all have that objection.

THE COURT: The objection is overruled.

THE COURT: I understand there is no objection to the manner of it.

MR. NUZUM: Oh, no, not to the method, your Honor.

36. The court erred in overruling defendants objections to the question propounded to the witness Martin, as follows:

Q. With respect to the minutes of the Board of February 4th, 1924, in making reference to Ordinance No. 106, being the ordinance providing for the assessment for licensing of every line of business conducted within the city limits, what, if anything, have you to say as to the No. 106 referring to the occupational ordinance?

MR. NUZUM: That was introduced in the record, ordinance No. 106. It was voted upon and passed upon. It is the record of a public official. I object to it on that ground in the first place, and in the second place I object to the question as incompetent.

THE COURT: Will you read the question, Mr. Hamilton?

(Question read by reporter.)

THE COURT: Overruled. The number appearing there was by error, either upon the part of Mr. Gyde, or myself. I wouldn't undertake to fix the responsibility for numbering it 106 instead of 105 as it should be numbered.

37. The court erred in overruling the objection of defendants to the testimony of the witness Martin, as follows:

Q. No. 106 refers to ordinance No. 105.

MR. NUZUM: That would be a conclusion of the witness.

THE COURT: Overruled.

A. Yes.

38. The court erred in overruling the objections of defendants to the testimony of the witness Gyde on the ground of his incompetency, as follows:

MR. POTTS: Just a moment, please. To that question and the evidence expected to be elicited the defendant A. J. Harwood objects, he being the only one of these defendants who was either a member of the council or an officer of Mullan or a defendant in this case who was present at that time or had any business relations with this witness, on the ground that such evidence is privileged, that the relation of attorney and client existed; that it was a confidential communication, advice given to an attorney by a client, and under the rules of law prevailing in the territory of Idaho at and immediately preceding the admission into statehood the witness is not a competent witness to testify to such matters. And on behalf of the defendants, Charles Ris-

tau, Henry Foss, John Wheatley, George Huston, F. O. Welch and Hartford Morphy, I object on the ground that it is hearsay and occurred long prior to their connection in any way with the village government; that it is not shown that it was ever transmitted to them, and that they are not bound by it, and that it would be prejudicial, and that it purports to have been given prior to the time fixed in this indictment as the alleged conspiracy.

THE COURT: Well, my recollection of the rule with respect to privilege arising out of the relationship of attorney and client is that it is a rule which rests essentially in the confidence which the relationship is calculated to inspire, and it is not just a mere arbitrary *ipsi dixit*. Where the City of Mullan or the Village of Mullan has a corporation counsel, he is not the attorney for every member of the board individually. He is the counsel for the city, and his advice in that capacity to the board in their official capacity in any matter for the city would be confidential, but to invoke the privilege as to these men merely as men it seems to me would be carrying the doctrine of privilege further than any case of carrying to which my attention has been drawn. If counsel has any authority to the effect that one who is acting in the capacity of corporation counsel occupies the relationship with each individual member of the council and that his lips are closed not only as to confidential matters concerning the city, but as to the affairs of every individual member constituting it, I will be able to rule with you.

MR. POTTS: I have no case, but I may say further, after careful examination of the authorities I have found no case that announced an exception to the rule where there is that confidential relation existing between a public official and an attorney for that public official. No exception has ever been made by any adjudicated cases that I can find, and I see no reason why the principle does not apply with equal strength. There is just as much reason why a member of the village trustees should be able to consult and communicate with the attorney that has been employed by that board of trustees, feeling free to make his communications, knowing that they will be held inviolate.

THE COURT: The trouble about it is that the relation of attorney and client did not exist between this witness and the members of the board. The relation of attorney and client existed between the witness and the Village of Mullan.

MR. POTTS: May I ask this witness a question, if your Honor please.

THE COURT: Yes sir.

MR. POTTS: Q. Who employed you as attorney while you were acting in the capacity you have described?

A. I would have to go back a long way to explain that, I think. Originally, I was employed in I think 1915.

MR. POTTS: Q. But at this time you were employed by the trustees, the board of trustees of the Village of Mullan.

A. Well, each time the board was reorganized somebody would make a motion that I be retained as Village attorney.

THE COURT: As village attorney?

A. As village attorney, and the motion was carried.

MR. POTTS: Q. Whom did you represent; whom did you act for; whom did you consult with?

A. Well, the individuals I would consult with. I took my orders from the board of trustees.

MR. POTTS: Q. And the board of trustees conferred with you for counsel and advice, did they not?

A. Yes sir.

MR. POTTS: Q. Under that employment?

A. Yes sir.

MR. POTTS: Q. And you were paid a yearly salary?

A. Monthly. I was paid a monthly salary and I drew it quarterly.

MR. POTTS: Q. As an attorney at law?

A. Yes sir.

MR. POTTS: Q. And you were at that time a duly licensed attorney at law under the laws of the State of Idaho?

A. Yes sir.

THE COURT: If this were an action against the City of Mullan and anything was sought to be disclosed as to the character of this witness' advice to the City in their representative capacity for the purpose of exposing the business of the city or fixing the responsibility of the city, I would have no hesitancy in saying

that the relation of attorney and client existed and that his advice to his client could not be disclosed, but where he was never at any time the attorney for these individuals, where the relation of attorney and client never existed between this man and any member of the board, I cannot see how there can be any confidence within the rules, and the objection is overruled.

39. The court erred in overruling the objections of defendants to the testimony of the witness Hull, as follows:

MR. POTTS: I wish to make an objection, your Honor, and it is necessary for me to lay the foundation. May I interrogate the witness?

THE COURT: Yes.

MR. POTTS: Q. At this time you were an attorney regularly employed by the village trustees of the town of Mullan, were you not, Mr. Hull?

A. Yes.

Q. And at the time this conversation occurred at your house these three members of the board of trustees had come to consult with you as their attorney with reference to the business of the village?

A. Yes.

Q. And the communications made by them to you and the advice given by you thereon related to the business of the village trustees?

A. It did.

MR. POTTS: On behalf of the defendants John Wheatley, Henry Foss and A. J. Harwood or what other member may have been present, the witness not

being certain; I object on the ground that the evidence is privileged; that it is confidential communications made by clients to their attorney and advice given thereon, and that the witness is made incompetent as a witness under the rules of law and evidence existing in the State of Idaho at the time it was admitted to the Union to testify to such matters, and that the rule of law in the 9th circuit is that the Federal Courts are bound by such rules. I object on behalf of the defendants, Charles Ristau, George Huston, F. O. Welch and Harford Morphy on the grounds that the evidence is hearsay, incompetent, irrelevant and immaterial and not binding on them.

MR. WERNETTE: We object on behalf of my defendants on the ground that the evidence sought to be elicited is hearsay, incompetent, irrelevant and immaterial.

MR. BANDELIN: And the same objection that Mr. Wernette made as to the clients that I represent.

THE COURT: And the objections will be overruled.

40. The court erred in overruling the objections of the defendants to the testimony of the witness Johnson, as follows:

Q. Did you have occasion to make a search of any place operated by Fond during the year 1929?

A. I did.

MR. NUZUM: It is the contention of the defendants Weniger and Bloom that none of the testimony of these witnesses in regard to searches or investigations.

or the results of searches, is admissible as against them. I don't want to be interrupting. May it be understood that that goes as to any defendant, on trial?

THE COURT: I do not want to broaden out the ruling too much, Mr. Nuzum. The objection to this question will be overruled .

41. The court erred in overruling the objection of defendant to the testimony of the witness Johnson as follows:

Q. Are you acquainted with Blacky Coughlin?

A. I am.

Q. And one of the defendants here, if you know?

A. Yes.

Q. Have you had occasion to make a search of any place operated by him?

A. Yes.

Q. When was that search made?

MR. NUZUM: Objected to as incompetent, irrelevant and immaterial, on behalf of defendants Weniger and Bloom.

THE COURT: Overruled.

42. The court erred in overruling the objections of defendants to the testimony of the witness Johnson as follows:

Q. Did you have occasion to search any place operated by the defendant Mike Kennedy?

A. I did?

Q. Did you have occasion to make a search there in the year 1929?

A. I did.

Q. Who was with you?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

43. The court erred in overruling the objections of defendants to the testimony of the witness Johnson, as follows:

Q. Did you have occasion to search the Rockford bar during this year?

A. Yes.

Q. Who if anyone did you find at the Rockford bar at that time?

A. Waino Pikkerainen.

Q. Who was with you at the time of the search?

A. Webb.

Q. Do you remember the date—the approximate date of it?

A. February—I wouldn't be positive—1929.

Q. What if anything did you find at the Rockford bar?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

44. The court erred in overruling the objections of defendants to the testimony of the witness Johnson, as follows:

Q. Who did you find at the Miners' Club at that time?

A. John Thompson.

Q. One of the defendants here?

A. Yes.

Q. Who was with you at that time?

A. Webb.

Q. What did you find on that occasion?

A. Myself and Webb walked into the place, walked through the swinging doors, and there was one man at the bar drinking beer. I says to Thompson, "Give us a bottle of beer." Thompson went—

MR. NUZUM: I want to interpose the same objection, incompetent, irrelevant and immaterial, on behalf of Weniger and Bloom.

THE COURT: Overruled.

45. The court erred in overruling the objections of defendants to the testimony of the witness Johnson, as follows:

Q. Did you during 1927 have occasion to search any place operated by the defendant Walter Johnson here?

A. I did.

Q. What place was that?

A. The Mullan Rooming House, June 22nd, 1927.

Q. And who was with you, if anyone, on that occasion?

A. Webb and Heffer.

Q. What did you find?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

46. The court erred in overruling the objection of defendants to the testimony of the witness Johnson, as follows:

Q. What was the date of that search?

MR. BANDELIN: Just a moment. Leo Aro is not on trial. He has never been apprehended.

MR. LANGOISE: Our position is just this with respect to this, the Hunter hotel is one of the places paying \$25.00 a month to the city. The question is whether or not this evidence is admissible as showing the occupation of these places.

THE COURT: Overruled.

MR. NUZUM: The same objection on behalf of defendants Weniger and Bloom.

THE COURT: Overruled.

47. The court erred in overruling the objection of defendants to the testimony of the witness Johnson, as follows:

Q. I will ask you if you had occasion to search the Miners' Club during the year 1927?

A. I did.

Q. Do you remember the date of that, the approximate date?

A. No, I can't recall the date.

Q. Do you have anything from which you can refresh your recollection with respect to the date of that?

A. I have.

Q. What?

A. These reports.

Q. Made with respect to that search?

A. Yes.

Q. I will ask you to turn to that. (Witness does so.)

Q. Are you now able to say the date of that search?

A. Yes.

Q. You have recalled it?

A. Yes.

Q. What is the date?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial on behalf of Weniger and Bloom.

THE COURT: Overruled.

48. The court erred in overruling the objection of defendants to the testimony of the witness Johnson, as follows:

Q. Did you have occasion to search the Hunter hotel bar during the fall of this year, 1929?

A. I did.

Q. Who was with you on that search?

A. Webb.

Q. Do you remember that date?

A. No, I don't.

Q. What did you find there, if anything?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of Weniger and Bloom.

MR. LANGROISE. The Hunter hotel.

THE COURT: Overruled.

49. The court erred in denying the motion to strike

the testimony of the witness McGill, said motion being as follows:

MR. NUZUM: On examination of Mr. McGill the other day, I think I must have boddred or something—at least it escaped my attention. The question was asked which I think shouldn't have been permitted to go without objection. It reads this way from the transcript:

“Question: Heretofore have you had occasion to tell your story in substance to Mr. Wernette and Mr. Bandelin, counsel for the defendants here?”

“Answer: Yes, they are both friends of mine.

“Question: That was some time ago, or recently?”

“Answer: Sir?”

“Question: That was some time ago?”

“Answer: That was before—even before the Grand Jury.”

I move to strike that as incompetent, irrelevant and immaterial. I do not think, your Honor, it is proper for witnesses testifying by showing that he told the attorneys for some of the defendants that story.

THE COURT: It comes too late. We can't, several days after a witness has been on the stand, pass upon his testimony in the absence of the sitting at the time it occurred, and the conditions as they existed at the time. The motion will be denied.

50. The court erred in overruling the objection to the testimony of the witness Johnson, as follows:

Q: I will ask you whether or not you asked him for any help.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

51. The court erred in overruling the objection of the defendant to the testimony of the witness Johnson, as follows:

MR. LANGROISE: Q. Just give us the conversation at the time that you first talked to him.

MR. NUZUM: I object as incompetent, irrelevant and immaterial on behalf of Weniger and Bloom.

THE COURT: Overruled.

MR. NUZUM: Exception.

52. The court erred in overruling the objection of the defendant to the testimony of the witness Johnson, as follows:

Q. Now, has Sheriff Weniger at any time from that time on given any assistance in the apprehension or the gathering of evidence against violators of the liquor laws in Shoshone County to you?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: You mean given this witness?

MR. LANGROISE: This witness, yes.

THE COURT: Overruled.

MR. NUZUM: Exception.

53. The court erred in overruling the objection of defendants to the testimony of the witness Johnson, as follows:

Q. During the time you were making any raids,

what occurred with respect to anything you did?

MR. NUZUM: I object to that. I think that is too general.

THE COURT: I think not. He is trying not to make it leading, and has directed the witnesses' attention to what he has in mind.

A. I have had the phone ring several times in different places and tell us to get out of there. that the Federals were coming.

54. The court erred in overruling the objections of defendants to the testimony of the witness Webb, as follows:

Q. What places did you search at that time?

A. We searched the Herman Arbliss place, the Mullan Inn, 220 Hunter Avenue, the McKinney place, known as the Coffee Shop, and the Mona McDonald place.

Q. Who was with you?

A. Mr. Johnson, Mr. Foster and Mr. Barron.

Q. What did you find if anything, at the Mullan Inn?

MR. NUZUM: On behalf of defendants Weniger and Bloom I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

55. The court erred in overruling the objections of defendants to the testimony of the witness Webb, as follows:

A. We found in the neighborhood of 50 bottles of beer, a number of jugs containing a small amount of

moonshine whiskey, funnel, liquor glasses, and so forth.

Q. Now what, if any thing, was found at the Mona McDonald place?

MR. BANDELIN: He has already gone into that, and it is repetition.

THE COURT: Overruled.

MR. NUZUM: Weniger and Bloom make the same objection, incompetent, irrelevant and immaterial.

THE COURT: Overruled.

56. The court erred in overruling the objections of defendants to the testimony of the witness Webb, as follows:

Q. Did you at that time talk with him, or did he talk with you about any help to be given in the enforcement of the liquor laws in that county?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

57. The court erred in overruling the objections of defendants to the testimony of the witness Webb, as follows:

A. We did have a conversation along that line.

Q. Give that to the Court and Jury as best you can.

MR. NUZUM: Same objection.

THE COURT: Overruled.

58. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

Q. Where did you first go?

A. I went to Jack Chislm's place next door to the Banquet Cafe.

Q. Did you try to buy there?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. NUZUM: Exception.

59. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

Q. Had you been in that place before?

A. I had.

Q. And had you been able to buy on every occasion before?

MR. NUZUM: Just a minute, I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

60. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

Q. Where did you go next?

A. To the Pastime.

Q. And what did you do there?

MR. NUZUM: I object as immaterial and incompetent.

THE COURT: Overruled.

61. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. I tried to buy a drink.

MR. LANGROISE: Q. Whom did you try to buy it from?

A. Nick Pavelich.

Q. What happened?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

62. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. I went in there and said, "Give me a drink."—

THE COURT: No, not the details. With what result, was the question?

A. I could not buy.

MR. LANGROISE: Q. Had you been buying in there prior to that time?

MR. NUZUM: The same objection.

THE COURT: Overruled.

63. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. I had.

MR. LANGROISE: Q. Had you been able to buy on other occasions that you had tried prior to this time?

MR. NUZUM: I object as immaterial and incompetent. The witness answers so quickly that I cannot get my objections in.

THE COURT: The objection will be overruled and the record may show that the objection was interposed timely.

64. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. You may answer. Were you able to buy on any other occasion that you had tried to buy there with the exception of the morning of the 15th after you had been to the sheriff's office?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

65. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. I had.

MR. LANGROISE: Q. Where did you go next?

A. To the White Front.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

66. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. Yes sir.

MR. LANGROISE: Q. Were you able to do so?

MR. NUZUM: The same objection.

THE COURT: Overruled.

67. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. Yes sir.

MR. LANGROISE: Q. Were you able to do so?

MR. NUZUM: The same objection.

THE COURT: Overruled.

68. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

A. No.

MR. LANGROISE: Q. Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

69. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you been able to buy there on every occasion that you had been there before until the morning of the 15th after you had been to the Sheriff's office?

MR. NUZUM: The same objection.

THE COURT: Overruled.

70. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Where did you next go?

A. To the rooming house upstairs at the Wallace Corner, the pool room over the Wallace Corner.

Q. Were you able to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

71. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you been able to buy there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

72. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you been able to buy there on every occasion prior to that that you had tried?

MR. NUZUM: The same objection.

THE COURT: Overruled.

73. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Where did you next go?

A. To the St. Francis Hotel.

Q. And did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

74. The court erred in overruling the objections of

defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

75. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

76. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you been able to buy there on every other occasion that you had tried to buy with the exception of this occasion on the 15th after you had been taken to Mr. Weniger's office by Mr. Weniger?

MR. NUZUM: The same objection.

THE COURT: Overruled.

77. The court erred in denying the motion of defendants to strike the testimony of the witness Cooper, as follows:

Q. And when you got to Mullan, where did you go?

A. I went to 111 Second Street known as the Rockford and tried to buy a drink.

MR. NUZUM: Just a moment. He asked him where he went. I move to strike the answer.

THE COURT: Motion denied.

78. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

Q. Were you able to buy a drink there?

MR. NUZUM: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

79. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you bought drinks there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

80. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you been able on every other occasion that you had tried to buy there prior to the time that you had been taken to Mr. Weniger's office by Mr. Weniger on the morning of the 15th, been able to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

81. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Where did you next go Mr. Cooper?

A. To the Miners' Club.

Q. And whom did you see there, if you recall now?

A. I don't recall the man.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

82. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

83. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you made purchases there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

84. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you ever before been refused liquor there when you had tried to buy except this time after you had been taken to Mr. Weniger's office on June 15, 1929?

MR. NUZUM: Just a moment. He says, "Had you ever before been refused except this time. Now, I don't think that question is very intelligible. I object to it as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

85. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

Q. Did you go to any other place in Mullan on that morning on that day?

A. I went to the Miners' Club and then to Mike Kennedy's Place.

Q. Did you try to buy at the Miners' Club?

MR. NUZUM: The same objection.

THE COURT: Overruled.

86. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

87. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. And how you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

88. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. And had you ever been refused prior to that day when you had tried to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

89. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Then where did you go after the Miners' Club?

A. To Mike Kennedy's popcorn stand.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes.

90. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

91. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

92. The court erred in overruling the objections of

defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. Had you ever been turned down or refused liquor there prior to the time—

THE COURT: Prior to the time that he was refused?

MR. LANGROISE: Q. Prior to the time that you were refused?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No, I was never turned down.

93. The court erred in overruling the objections of defendants to the testimony of the witness Cooper, as follows:

MR. LANGROISE: Q. And the drinks that you have referred to in your testimony were of intoxicating liquors, were they?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

94. The court erred in sustaining the objections to the testimony of the witness Cooper, as follows:

Q. Then what occurred to make you think of the 13th that you had been uncovered?

MR. LANGROISE: I object to that as a repetition, if your Honor please.

THE COURT: Objection is sustained.

MR. NUZUM: Exception.

95. The court erred in sustaining the objections to the question asked the witness Cooper, as follows:

Q. Mr. Witness, did you not answer me when I asked you the time that he trailed you to make the first buy that it was about nine o'clock?

MR. LANGROISE: I object to the repetition.

THE COURT: The objection is sustained.

MR. NUZUM: Exception.

96. The court erred in overruling the motion of the defendant R. E. Weniger to dismiss the case, as follows:

MR. NUZUM: * * * As to the defendant R. E. Weniger, I move the Court to dismiss the case, because there is no evidence in the case tending to connect R. E. Weniger with the alleged conspiracy as charged in the indictment. Secondly, no evidence in the case which in any way tends to show that the defendant R. E. Weniger in any manner violated any of the provisions of the National Prohibition Act. Thirdly, that if the evidence showed anything, it shows mere passiveness on his part in respect to the National Prohibition Act and nothing of an active character in that respect.

THE COURT: There is no use for counsel to argue that motion, and it is denied.

MR. NUZUM: Exception.

97. The court erred in overruling the motion of the defendant Charles Bloom to dismiss the case, as follows:

MR. NUZUM: * * * I make the same motion with respect to the defendant Charles Bloom.

THE COURT: And that motion is denied.

MR. NUZUM: Exception.

98. The court erred in denying the motion to dismiss on the part of the defendants Weniger and Bloom, which was renewed after further testimony had been offered, as follows:

MR. NUZUM: May the motions be considered renewed?

THE COURT: Yes, sir, the motions may be considered renewed and denied.

99. The court erred in denying the motion of the defendants Weniger and Bloom to compel the government to elect which of the two conspiracies charged in the indictment it would proceed on, said motion being as follows:

MR. NUZUM: All right. I desire at this time, if your Honor please, to move that the Government be compelled to elect which of the two conspiracies charged in the indictment they will proceed on. There is first a charge in the indictment, or in one count, to violate Section three of Section 25, and Section 26 of title two of the Act of Congress of the United States National Prohibition Act, and in the same count a conspiracy charged to violate section 1 of title 2 of the Act of Congress known as the National Prohibition Act. I believe, while it is permissible to charge those in separate counts, that it is not under the law permissible to charge two conspiracies in one count, and Mr. Bishop lays down the rule that the proper time to make that objection and motion is prior to the opening of the defense and therefore, if your Honor please, I move for that election.

THE COURT: The motion to elect will be denied.

MR. NUZUM: Exception.

100. The court erred in sustaining the objections to the testimony of the defendant R. E. Weniger, as follows:

Q. Was there any ruling of the Supreme Court that handicapped you in 1927?

A. There was.

MR. RAY: Just a moment, if your Honor please, we object to both the form of the question and —

THE COURT: Objection is sustained.

101. The court erred in overruling the objections to the cross examination of R. E. Weniger, as follows:

Q. And I will ask you if there were more than twenty arrests made for violation of the prohibition laws in 1925, where there was a prosecution?

MR. NUZUM: That is immaterial whether there was a prosecution or not. His office doesn't conduct the prosecutions.

THE COURT: Overruled.

102. The court erred in overruling the objections to the cross examination of the defendant R. E. Weniger, as follows:

Q. During the years 1925, 1926, 1927 and 1928 did you or any of your deputies arrest any of the defendants in this case for violation of the Prohibition Laws?

MR. NUZUM: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

103. The court erred in sustaining the objections to the question to R. E. Weniger, as follows:

MR. NUZUM: Q. Mr. Weniger, they have asked you something about your finances. How many Federal agents have come and Government agents, and searched over your books and gone into your affairs within the last four or five months?

MR. LANGROISE: I object to that, if your Honor please, for the reason he can show his finances, but whether anyone inspected them is immaterial.

THE COURT: Objection sustained.

MR. NUZUM: Exception.

104. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. At one time I see them play cards there.

Q. What were they playing?

A. Well, that I don't know.

MR. NUZUM: Wait a minute, Bloom. I object as incompetent, irrelevant and immaterial as to any card playing in the Bilberg.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

105. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

Q. You did not pay any attention?

A. I never stopped long enough to find out what they were playing.

Q. You did not want to know, did you?

MR. NUZUM: Just a moment, I object. Your Honor please, as improper cross examination.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

106. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

MR. LANGROISE: Q. Weren't you interested as an officer of the law?

MR. NUZUM: I object as immaterial and incompetent.

THE COURT: Overruled.

107. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

MR. LANGROISE: Q. You had taken an oath to enforce the laws of this county, had you not?

A. Yes sir.

Q. And there is a law against gambling, isn't there?

MR. NUZUM: I object as incompetent and immaterial, anything about gambling.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

108. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. Well, I don't know whether it was gambling or not.

MR. LANGROISE: Q. You did not try to find out either, did you, Mr. Bloom?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: The objection is overruled.

109. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. I seen the cards and the chips on the table and they were playing.

MR. LANGROISE: Q. And you did not try to find out, did you, what they were playing?

MR. NUZUM: The same objection.

THE COURT: Overruled.

110. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. I don't know that I did.

MR. LANGROISE: Q. You had never heard any reports that they were gambling at the Bilberg, did you?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

111. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

Q. And you never heard any rumor that they were gambling at the Bilberg?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

112. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. Well, I heard they were playing cards, that is all.

MR. LANGROISE: Q. Didn't you ever hear they were gambling?

MR. NUZUM: It is already answered.

MR. LANGROISE: I submit it is not answered.

THE COURT: Overruled.

MR. NUZUM: Exception.

113. The court erred in overruling the objection to the cross examination of the defendant Bloom as follows:

Q. What did you hear about it?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

114. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

Q. And you knew of the Government picking Herbert Anderson up at the Bilberg in 1927, didn't you?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

115. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

Q. Did you ever make any investigation at the Bil-

berg after you knew of them taking Herbert Anderson out of there for a liquor violation?

MR. NUZUM: Just a moment. I object as incompetent, irrelevant and immaterial, and assuming a state of facts not in evidence.

THE COURT: Overruled.

MR. NUZUM: Exception.

115. The court erred in overruling the objection to the cross examination of the defendant Bloom, as follows:

A. No, I did not.

MR. LANGROISE: Q. Why didn't you?

MR. NUZUM: I object as immaterial.

THE COURT: Objection is overruled.

116. The court erred in denying the request of defendants' counsel to have the prosecutor state what prohibition law he was examining the witness Bloom about, as follows:

MR. LANGROISE: Q. Did you ever have any orders from the Sheriff's office with respect to the enforcement of the prohibition laws?

A. I did.

Q. And were they that you were not to pick them up?

A. No.

MR. NUZUM: Just a moment.

MR. LANGROISE: Q. What were they?

MR. NUZUM: I would like to have what he means by the prohibition laws defined, whether it is the State law or the National law.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

117. The court erred in overruling the objection of defendants to the cross examination of defendant Bloom, as follows:

MR. LANGROISE: Q. Did he ever tell you that you were to investigate to see whether or not the law was being violated?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

118. The court erred in overruling the objection of defendants to the cross examination of defendant Bloom, as follows:

MR. LANGROISE: Q. Did you ever make any investigation of the Bilberg Hotel Bar during any of these years, that is, 1925, 1926, 1927, 1928 and 1929 to see whether or not the prohibition laws were being violated in that place?

MR. NUZUM: I object as incompetent, immaterial, and request that the witness be given the information as to what prohibition laws he refers to.

THE COURT: Overruled.

MR. NUZUM: Exception.

119. The court erred in overruling the objection of defendants to the cross examination of the defendant Bloom, as follows:

Q. Well, did you ever make any investigation of any kind?

MR. NUZUM: The same objection.

THE COURT: Overruled.

MR. NUZUM: Exception.

120. The court erred in overruling the objection of defendants to the cross examination of the defendant Bloom, as follows:

Q. None in Mullan knew anything about them selling whiskey there that you inquired of?

MR. NUZUM: Just a moment. That is not a fair question.

THE COURT: Overruled.

121. The court erred in overruling the objection of defendants to the cross examination of the defendant Bloom, as follows:

Q. You did not care whether or not they were violating the law?

A. Oh, yes, I did, too, care.

Q. Well, weren't you interested?

A. Yes.

Q. Then, why didn't you try to find out?

MR. NUZUM: I object as incompetent and immaterial. A man don't have to go in and take an inventory of what is in those places.

THE COURT: Overruled.

MR. NUZUM: Exception.

122. The court erred in overruling the objection of defendants to the cross examination of the defendant Bloom, as follows:

Q. Did you ever watch the place?

A. What do you mean, watch?

Q. From across the street or staying around there?

MR. NUZUM: Wait a minute. That is a double question.

THE COURT: Overruled.

MR. NUZUM: Exception.

123. The court erred in overruling the objection to the testimony of the witness Bloom, as follows:

Q. Were you ever in the Mullan Pool Hall after that?

A. I do not believe I was.

Q. Why didn't you?

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

124. The court erred in overruling the objection to the testimony of the witness Bloom, as follows:

Q. Weren't you interested in enforcing the laws?

A. I was.

MR. NUZUM: Just a moment. I object to that, there is no showing that after Speck was taken out, the law was being violated at any specific time.

THE COURT: He is asking whether he investigated to find out whether it was or not.

MR. NUZUM: He said "No", and then the question was asked whether he wasn't interested in enforcing the law.

THE COURT: Proceed.

125. The court erred in overruling the objection to the testimony of the witness Bloom, as follows:

Q. You never heard of any gambling going on up in the Central hotel bar?

A. No, sir.

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

126. The court erred in overruling the objection to the testimony of the witness Bloom, as follows:

Q. Did you ever make any inquiry as to whether or not there was any gambling going on?

MR. NUZUM: I object to that as immaterial, whether he made any inquiry or not.

THE COURT: Overruled.

127. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. During the time that Rantella was there, did you ever make inquiries to find out whether or not the laws of the State of Idaho were being violated, or of the United States?

MR. NUZUM: I object, because a violation of the laws of the United States is immaterial.

THE COURT: Overruled.

MR. NUZUM: Note an exception.

128. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. And handled the same line of stuff that the Mullan Inn did, and other places were handling, did they?

MR. NUZUM: That is argumentative.

THE COURT: Read the question, Mr. Reporter!

(Reporter reads question.)

THE COURT: Overruled.

129. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. Did you make any investigation as to what kind of a place he was taken out of?

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

130. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q: Did you ask them whether or not there was any gambling in there?

MR. NUZUM: I object to that as immaterial, whether or not there was any gambling.

THE COURT: Overruled.

131. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

A. I didn't.

Q. Were you interested in whether or not there was any gambling there?

A. I was.

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

132. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. Why didn't you ask about it then?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

133. The court erred in denying the request that the question as to whether or not they were running gambling and selling whisky be segregated, as follows:

Q. Did you ever have any reports that the Bolo was running gambling, and selling whisky?

MR. NUZUM: I object to that as immaterial, insofar as the gambling is concerned. I would request that the question would be segregated.

THE COURT: Overruled.

134. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. Why didn't you make any investigation?

MR. NUZUM: I object to that as immaterial, with reference to gambling.

THE COURT: Overruled.

135. The court erred in overruling the objection of defendants to the testimony of the witness Bloom, as follows:

Q. You weren't interested as to whether or not they were gambling, or violating the law?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

136. The court erred in overruling the objection of defendants to the cross examination of the witness Bloom, as follows:

Q. As a matter of fact, Mullan was a wide open town, wasn't it?

MR. NUZUM: I object to that as immaterial, and incompetent.

THE COURT: Overruled.

MR. NUZUM: Exception.

137. The court erred in overruling the objection of defendants to the cross examination of the witness Bloom, as follows:

Q. Just what did you do, during the time you were deputy sheriff, to apprehend any violators of the law, or stop violations of the law?

MR. NUZUM: I object to that as irrelevant, immaterial, and request that the question be limited to liquor.

THE COURT: Overruled.

138. The court erred in allowing the witness Sheridan to testify, the said witness Sheridan having been in the court room all of the time, and an order of exclusion having been made, excluding all witnesses before any testimony was had, as follows:

MR. LANGROISE: If your Honor please, during the course of the trial a certain matter came to our attention, and Mr. Sheridan has been in the courtroom since that time. We wish to call him for the purpose of impeaching Mr. Weniger with respect to certain things. He has been in here during all of the course of the trial.

MR. NUZUM: Your Honor, Mr. Sheridan was here when Weniger was asked the question. If you had

excused him then, you might have gotten away from the order of exclusion of witnesses, but you kept him in here all the time Weniger was examined.

THE COURT: The objection is overruled.

139. The court erred in overruling the objections to the testimony of the witness Sheridan, as follows:

Q. I will ask you, Mr. Sheridan, if during the afternoon recess in the corridors—

MR. NUZUM: Now, if your Honor please, I object to this, to the putting of the impeachment question, for this reason, that your Honor has in mind what it was; that that, if anything, was a part of the case in chief, and he cannot withhold any of his case in chief and then put it by way of impeachment make it competent as rebuttal.

THE COURT: Objection is overruled.

140. The court erred in overruling the objections to the testimony of the witness Sheridan, as follows:

Q. And did he at the same time and during the same conversation, with the same parties present, state in substance: "For the last year Shoshone County has been overrun with undercover agents of the dry forces until it is now impossible for a stranger to enter the boundaries of the county without being placed under suspicion?"

MR. NUZUM: The same objection, if Your Honor please.

THE COURT: Overruled.

141. The court erred in overruling the objections to the testimony of the witness Sheridan, as follows:

A. Yes sir.

MR. LANGROISE: Q. And if during the same conversation and during the same time and the same parties being present, if he did not state in substance and effect: "That during the period that I have served as Sheriff of Shoshone County, I have minded my own business, pursuing and catching law-breakers, and when complaints against bootleggers and liquor handlers were registered in my office arrests were made, but I did not send my men snooping into the personal affairs of the citizens of the community."

MR. NUZUM: Just a moment. The same objection.

THE COURT: Overruled.

142. The court erred in denying the offer in evidence of the Wallace Press Times, as follows:

MR. NUZUM: If your Honor please, I offer in evidence the Wallace Press Times which has been referred to.

MR. LANGROISE: To which we object for the reason that—

THE COURT: The objection is sustained.

MR. NUZUM: Exception.

143. The court erred in denying the motion of defendants Weniger and Bloom to strike all of the testimony of the witness Sheridan, as follows:

MR. NUZUM: The defendants, Weniger and Bloom and Anna Tornberg first move to strike all the testimony of the last witness, Mr. Sheridan, who was

on the stand, because he was in here and heard the testimony of the witness whom he was put on the stand to impeach, and kept in the room during that witness' testimony, in violation of the exclusion order which your Honor had made.

THE COURT: The motion is denied.

MR. NUZUM: Exception.

144. The court erred in denying the motion of defendants Weniger and Bloom to strike all of the testimony in the case with reference to gambling and prostitution, as follows.

MR. NUZUM: The defendants Weniger and Bloom move to strike all of the testimony in the case with reference to gambling and prostitution as not in any manner involving a violation of any laws of the United States or any Federal law of any kind, character or description, and therefore not the subject of a conspiracy to violate any of the laws of the United States.

THE COURT: The motion is denied.

MR. NUZUM: Exception.

145. The court erred in denying the motion of defendant Weniger to instruct a verdict of not guilty and discharge him, as follows:

MR. NUZUM: The defendant R. E. Weniger at this times moves the Court to instruct a verdict of not guilty and discharge him for the reason that the evidence in this case does not show any conspiracy on the part of the said Weniger or any acts on the part of the said Weniger which would tend to violate the National

Prohibition Law or any law of the United States. I would like to be heard, if your honor desires to hear me, on that question.

THE COURT: The motion will be denied.

MR. NUZUM: Exception.

146. The court erred in denying the motion of defendant Bloom to instruct a verdict of not guilty and discharge him, as follows:

MR. NUZUM: The defendant Charles Bloom moves that the Court instruct a verdict of not guilty and discharge him for the reason that the evidence in the case wholly fails to connect him in any manner with a conspiracy to violate the National Prohibition Law or any law of the United States or to do anything more than to show perhaps a knowledge of the violation of the State law in reference to gambling in some instance, nothing with reference to prostitution, and that therefore there is nothing to be submitted to the jury in so far as he is concerned.

THE COURT: Motion is denied.

MR. NUZUM: Exception.

147. The court erred in giving the following instruction:

A conspiracy, gentlemen of the jury, is a corrupt agreement or combination between two or more persons to commit an offense or offenses against the United States. This corrupt agreement or combination is the gist of the offense but the performance of one or more of the overt acts, charged in the indictment to effect the object of the conspiracy is necessary to make the offense

indictable and punishable under the statute.

By the expression "an act to effect the object of the conspiracy", commonly called an overt act, is meant an act done by one or more of the conspirators, subsequent to the formation of the corrupt agreement or combination and during its existence for the purpose of carrying such agreement or combination into effect. The mere corrupt agreement or combination alone is not sufficient to constitute an offense under this statute, but subsequent to the formation of said corrupt agreement or combination and during its existence one or more of the conspirators must have done or committed some additional act charged in the indictment aimed at the accomplishment of the unlawful purpose and tending to carry into effect the unlawful enterprise.

A charge of conspiracy is rarely susceptible of proof by direct testimony alone. It is well settled that the evidence in proof of conspiracy may be, and from the nature of the offense generally must be circumstantial. A concerted action to violate the law is usually secret and is ordinarily shown by separate, independent acts, each tending to support and establish a common design and purpose on the part of those adding or participating in such acts. This common design and purpose is the essence of the crime of conspiracy, but to establish it, it is not necessary to prove that the parties come together formally and actually agreed in terms to have that design or purpose or to pursue by concert of action or by common means. The jury will be justified in inferring the existence of a conspiracy if the government

satisfies you beyond a reasonable doubt by the testimony of credible witnesses that any two or more of the persons named in the indictment aimed by their acts to accomplish the same unlawful purpose or object, one performing one part thereof and the other or others another part of the same so as to complete it, the acts of each ever leading to the same unlawful result, although the parties so participating may never have met together to concert the means or to give effect to the unlawful design and purpose. Nor is it necessary that a conspiracy shall originate with the persons charged. Every one coming into a conspiracy at any stage of the proceedings with knowledge of its existence is regarded in law as a party to the conspiracy and as a party to all the acts done by any of the other parties to the conspiracy, either before or afterwards, in pursuance of the common design and purpose.

One charged with conspiracy with many others may be convicted on proof of his conspiring with any of such others without proof of conspiracy participated in by all of them. Mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. In other words, conspiracy implies concert of design and purpose, but it does not contemplate the participation by each conspirator in every detail of its execution, for the statute provides if a conspiracy is entered into to commit any offense against the United

States and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to the conspiracy is guilty. Participation in the design or purpose of the unlawful enterprise is the essential thing, but it is not necessary that each conspirator participate in the doing of every act committed in furtherance of such design and purpose.

148. The court erred in giving the following instruction:

In this connection I further instruct you that it is not necessary that the sole object of a conspiracy be to commit an offense against the United States. It is sufficient if one of the objects of the conspiracy is so to commit such an offense.

A conspiracy may have a number of objects, some of which may not involve the commission of an offense against the United States, but if one of the objects and purposes of the conspiracy is to commit an offense against the United States and overt acts are committed for the purpose of carrying the conspiracy into effect, that in law is sufficient. I charge you, however, that the only object to the claimed conspiracy in this case over which the United States and its courts have any jurisdiction is the one set forth in the indictment, namely, a conspiracy to commit violations of the National prohibition Act. A conspiracy with respect to gambling or prostitution, or any of the ordinary forms of municipal vice, if confined to such places, would not be a conspiracy to commit an offense against the United States, for the reason that the United States and its courts have

no jurisdiction with respect to gambling, prostitution and municipal vice.

The only object of the claimed conspiracy which you may take into account in arriving at your verdict in this case is the object alleged in the indictment, namely, that the parties conspired to violate the National Prohibition Act in the respects enumerated and set forth in the indictment.

The testimony in this case with respect to gambling and prostitution in the village of Mullan was admitted because it was so interwoven with the charge of violating the laws of the United States, namely, the prohibition laws, that it was competent for you to take it into consideration in connection with all the other facts and circumstances disclosed by the evidence in the case as a shedding light on the question of whether there was a conspiracy to violate the prohibition laws, if in your judgment such evidence has any such effect.

149. The court erred in giving the following instruction:

With respect to the defendants, **R. E. Weniger** and **Charles Bloom**, Sheriff and Deputy Sheriff respectively of Shoshone County, Idaho, and the defendants, **R. O. Welch** and **Hartcourt Morphy**, policeman of the village of Mullan, Idaho, I instruct you that these defendants are not on trial for the mere failure to enforce the prohibition laws, state or national, in the village of Mullan or in the county of Shoshone. These defendants are not accused of acts of omission but of commission, namely, that they entered into the conspiracy described

in the indictment to violate the prohibition laws of the United States in the particulars set forth in the indictment.

150. The court erred in giving the following instruction:

But, gentlemen of the jury, in this connection I instruct you that where individuals are the occupants of a public office or offices and whose duties in whole or in part require of them the enforcement of the liquor laws and the arrest of those engaged in such law violation, and it is made to appear that within the jurisdiction of such offices, such laws are openly, notoriously and continuously violated in such manner and under such circumstances that the jury is satisfied beyond all reasonable doubt that such peace officers in fact knew of such flagrant, open and continuous violations, if you find there were such, and that such officers did little or nothing to enforce the laws that were being violated by arresting those engaged in their violation. These are facts and circumstances which you have a right to take into consideration together with all the other facts and circumstances disclosed by the evidence in the case as shedding light on whether or not such peace officers, or any of them, actually joined the conspiracy charged in the indictment and aided and permitted its execution. In such circumstances you should inquire whether such acquiescence in such law violation, if you find there was such, was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers, or was the conduct

passive and intentional with full knowledge of a conspiracy to bring about such violation and was passed with a view and for the purpose of protecting and aiding it. In other words, was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from performing the duty with the knowledge of the violations for the purpose of aiding and assisting in the conspiracy to violate the laws which were being violated?

Mere lack of diligence in the performance of their duties on the part of public officers is not enough. There must in addition be proof of knowledge of facts showing an intention on the part of the officers in question to aid in the unlawful act by refraining purposely from doing that which they were by the duties of their office bound to do, with the intent and for the purpose of becoming a party to and aiding in the execution of a conspiracy to violate those laws. This you must determine by your verdict in the light of all facts and circumstances disclosed by the testimony in the case.

151. The court erred in refusing to give the following instruction:

I.

The first conspiracy charged in the indictment is that the defendants named did "conspire and agree together and with each other to commit certain offenses against the United States of America, and the laws thereof, to-wit, to possess, to transport, to sell and to manufacture intoxicating liquors containing more than one-

half of one per cent. of alcohol by volume, and fit for beverage purposes, to-wit, wine, beer and whiskey, in violation of Section 3, Section 25 and Section 26 of Title II of the Act of Congress of October 28th, 1919, commonly known as the National Prohibition Act." The court construes the language of the indictment to mean that such of them as may have entered into the conspiracy conspired to commit jointly by their own acts or the acts of their agents the offenses of possessing, transporting, selling or manufacturing the intoxicating liquors described in the indictment. Under the language of the indictment it is not enough that the defendants conspired to commit some other offense, however criminal it may have been. They must have conspired jointly by themselves or agents to possess, transport, sell and manufacture the intoxicating liquors, and unless you can find from the testimony beyond a reasonable doubt that they are guilty of conspiring jointly, by the acts of themselves or their agents, to possess, transport, sell or manufacture the intoxicating liquors described in the indictment, it is your duty to acquit them.

152. The court erred in refusing to give the following instruction.

II.

The second conspiracy charged is that the defendants conspired to maintain in the village of Mullan a large number of common nuisances, to-wit, rooms, houses, buildings, structures and places where intoxicating liquors containing more than one-half of one per cent.

of alcohol, by volume, and fit for beverage purposes, to-wit, beer, wine and whiskey were to be manufactured, sold, kept for sale, and bartered for beverage purposes. The charge is that the defendants conspired to themselves jointly maintain the common nuisances described in the indictment. You are not concerned with any other conspiracy, however criminal it may have been, and if you find that the conspiracy as charged in the sense that I have explained it is not sustained by evidence sufficient to satisfy you beyond a reasonable doubt of the guilt of the accused, it is your duty to acquit them, or such of them as you find not to have entered into the conspiracy.

153. The court erred in refusing to give the following instruction:

III.

The indictment alleges that Weniger and Bloom were members of the conspiracy charged. It is in proof that said persons are officers of the State of Idaho, to-wit, the sheriff of Shoshone County, Idaho and his deputies. If they actually entered into a conspiracy to maintain the nuisances charged, or to keep, possess, sell, transport or manufacture intoxicating liquors, then their official character does not render them immune from punishment for that offense. But the court charges you that their official character as state officers does not make them guilty, however remiss they may have been, if they were remiss, in failing to enforce the laws of the State of Idaho against the commission of nuisances or other

infractions of the state law. It is no part of their duty as officers of the state, under the laws of the United States, to make arrests without a proper warrant under the laws of the United States, for infractions of the prohibition law, or to otherwise endeavor to enforce such laws, and their mere failure to make such arrests, or to otherwise endeavor to enforce such laws, if that be the only evidence to connect them with the conspiracy charged, would not make them guilty under the indictment in this case, and they should be acquitted.

154. The court erred in refusing to give the following instruction:

IV.

In this case it is not shown by direct evidence that the conspiracy charged was actually entered into. The government relies on the proof of circumstances to show the conspiracy. Such circumstances must convince you beyond a reasonable doubt that there was in fact such a conspiracy. And if you find that such a conspiracy was entered into, you must then consider the testimony to determine, as to each individual defendant, whether he or she was a party to the conspiracy, and if you are not satisfied by proof beyond a reasonable doubt as to any one or more of the defendants, that they were parties to the conspiracy, it is your duty to acquit such defendant or defendants.

155. The court erred in refusing to give the following instruction:

V.

The court charges you that the mere presence of an accused at a place or places where overt acts were being committed in aid of the conspiracy, coupled with a refusal to interfere, or mere concealment of the crime, or a mere knowledge that the crime was being committed, or a mental approbation of what was being done while the will contributed nothing in the doing, would not be sufficient, without more, to justify you in finding that a particular defendant was a party to the conspiracy. Such acts on the part of a defendant would be circumstances to be considered in determining whether any particular defendant was a party to the conspiracy, but standing alone, they would not be sufficient evidence of guilt to justify a conviction.

156. The court erred in refusing to give the following instruction:

VI.

In connection with the testimony as to the activity or inactivity of Sheriff Weniger and his deputy, Bloom, as bearing on their guilt or innocence as conspirators, the court charges you that since March 26, 1927, it has been law of the State of Idaho that said officers have no authority to make searches in homes or other places in which intoxicating liquors might have been kept for sale without a search warrant issued on sworn evidence of a positive character. A search warrant issued on information and belief, or based on conclusions rather than facts, gives no authority for such a search. The court charges

you further, as bearing on the activity or inactivity of said defendants, that it is your duty to consider under the evidence whether the sheriff was furnished by the County Commissioners of Shoshone County with a sufficient force of deputies or with a fund to make possible on his part activity greater than the evidence shows to have been exerted by him in enforcing the prohibition laws of the state.

157. The court erred in refusing to give the following instruction:

VII.

The court charges you that the fact that many persons in a community or in a neighborhood are engaged in violating the law is not evidence of a conspiracy on their part to violate the law. There must have been a meeting of the minds of such persons in an agreement to so violate the law in which each person was to do something more than to himself violate the law. Any number of separate violations of the law, without such an agreement, does not constitute a conspiracy.

158. The court erred in refusing to give the following instruction:

VIII.

The court charges you that in order to constitute a conspiracy to violate the federal prohibition laws, there must have been "a serious and substantially continued group scheme for co-operative breaking of such laws." Such conspiracies are most difficult to try without pre-

judice to innocent defendants, and testimony should be carefully scanned by the jury in alleged conspiracy cases to determine whether the acts proven show simply individual action without concert, or whether it shows “a serious and substantially continued group scheme for co-operative law breaking.”

159. The court erred in refusing to give the following instruction:

1-A

There are two methods of proving the existence of a conspiracy—one by direct proof of the agreement which constitutes the conspiracy; the other by circumstances which may be sufficient to satisfy the jury that such conspiracy was actually entered into. These circumstances must convince you beyond a reasonable doubt that there was in fact such a conspiracy as is charged in the indictment. The evidence must also satisfy you beyond a reasonable doubt that the defendants Winegar and Bloom were parties to that conspiracy in order to justify you in finding that the latter were guilty. Juries are not permitted to convict persons of crime on speculation or probabilities. The evidence must satisfy them of guilt beyond a reasonable doubt.

160. The court erred in refusing to give the following instruction:

2-A

The parties are upon trial for conspiracy to possess, to transport, to sell and to manufacture intoxicating li-

quors, containing more than one-half of one per cent alcohol by volume fit for beverage purposes, to-wit, wine, beer and whiskey, in violation of Section 5, Section 25 and Section 26 of the Act of Congress of October 28th, 1919, in the Village of Mullan, County of Shoshone, State of Idaho, and to maintain in said Village of Mullan, State, County and District aforesaid, a large number of common nuisances, to-wit, rooms, houses, buildings, structures and places where intoxicating liquors containing more than one-half of one per cent. of alcohol by volume and fit for beverage purposes, to-wit, beer, wine and whiskey, were to be manufactured, sold, kept for sale and bartered for beverage purposes, in violation of Section 21, Title II. of the aforesaid act of Congress. You will first inquire whether such a conspiracy was in fact entered into by the defendants, or any two or more of them. The fact that infractions of the prohibition laws were general or public and notorious in the Village of Mullan is not sufficient standing alone, to show the conspiracy charged. A mere toleration of criminal acts, or a mental approbation of what is being done while the will contributed nothing to the doing, is not sufficient proof of conspiracy to do the criminal acts. There must be proof of an agreement to do the acts alleged by concerted action of the conspirators. If you find that such a conspiracy was entered into, you will next inquire whether the defendants Winegar and Bloom were parties to the conspiracy, and I again charge you that mere toleration on the part of said defendants, or even mental approbation on their part of what was being

done by others in the execution of such a conspiracy, while their will contributed nothing to the conspiracy, is not of sufficient standing alone to show they were parties to the conspiracy.

161. The court erred in refusing to give the following instruction:

3-A

The government affirms the formation and existence of a conspiracy to commit the particular offense charged against the United States, and that these defendants were each a party to such conspiracy. The burden is therefore upon the government to prove what it thus affirms by legal and competent evidence, in order to ask a verdict in its favor.

162. The court erred in refusing to give the following instruction:

4-A

Statements of some of the accused conspirators, in the absence of the defendants, and some of them on trial, and conversations with some of the witnesses on the part of persons accused as co-conspirators other than the defendants, made in the absence of the defendants, have been given in evidence. These statements were admitted to show the nature and purpose, the plan and operations, of the conspiracy, if one existed, and to aid in shedding light upon the relation of the persons so speaking to the transactions; but guilt cannot be fastened upon any person by the declarations or statements, oral

or written, by others. Guilt must originate within a man's own heart, and it must be established by his own acts, conduct, or admission. To establish the connection of any one of the defendants with the conspiracy, such connection must be shown by facts and circumstances, or by his own acts, conduct, or declarations, independent of the declarations of others, and, until this fact is thus established, he is not bound by the declarations or statements of others.

The principle of law and rule of evidence is that, when once a conspiracy or combination is established and the defendant's connection therewith is shown by independent evidence, then he is bound by the acts, declarations, and statements of his co-conspirators, because in that event he is deemed to assent to or command what is done by any other in furtherance of the common object. In this case, in determining whether any one of the defendants on trial was a party to the conspiracy, if you find a conspiracy was formed, you cannot consider the declarations and statements made by other persons to the various entrymen or others in the absence of such defendant, as such defendant is not bound by or affected by such statements and declarations of others, until it is shown by other competent evidence that he was a party to such unlawful conspiracy.

163. The court erred in refusing to give the following instruction:

5-A

In considering whether or not Winegar and Bloom

were parties to the conspiracy or agreement, if you find there was one, you are only to take into consideration their own statements, action, and conduct, and their own connection with the action and conduct of others, as shown by the evidence, independent of any statements or declarations by others; and unless you find from such evidence that they were parties to such conspiracy, if one existed, then it would be your duty to acquit them. If, however, you find they were parties to such conspiracy, then the statements and declarations of their co-conspirators may be considered as if made by them.

164. The court erred in refusing to give the following instruction:

I-B

In every criminal prosecution and in this prosecution the defendants and each of them are presumed to be innocent of the crime charged. This is not a mere idle presumption to be disregarded by you, but is a part of the law of the land. It attaches to the defendants and each of them at all stages of the case, goes with you into the jury room and remains with you and is binding upon your conscience until you can say on your oaths as jurors that said presumption has been removed by the evidence in the case, and you are satisfied from the evidence in the case of the guilt of the defendants beyond a reasonable doubt, and if said presumption is not so removed, and if you have a reasonable doubt as to the guilt of the defendants, or either of them, then it is your duty to resolve that doubt in their favor, and find the defendants not guilty.

165. The court erred in refusing to give the following instruction:

II-B

The accused are competent witnesses for themselves in this case under the laws of the United States. Their credibility may be affected by their interest in securing an acquittal, but aside from that fact, they stand on the same footing as any other witness in this case in the matter of credibility. Their manner and demeanor in testifying, their apparent prejudice or bias, their fairness and consistency in testifying, and their interest in testifying, are all factors proper to be considered in weighing the credibility of their testimony, to the same extent as the same factors are to be considered in weighing the testimony of any other witness. And after weighing the testimony of the accused in the manner stated you believe him to be more credible, better entitled to be believed than the witness or witnesses for the prosecution, then if the conflict in the testimony be as to a material matter in the case, you are entitled to believe the accused in preference to the prosecuting witnesses, and may find your verdict on such belief.

166. The court erred in refusing to give the following instruction:

III-B

The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption

the defendants are all entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence proving their guilt beyond a reasonable doubt.

167. The court erred in refusing to give the following instruction:

IV-B

Proof of good character is a species of testimony admissible as bearing on the guilt or innocence of one accused of crime, and it may, in connection with all the testimony in the case, be sufficient to raise a doubt in your minds of the guilt of the accused.

WHEREFORE the appellants pray that said judgment be reversed and that said District Court of the United States in and for the District of Idaho, Northern Division be ordered to enter a decree reversing the decision of the lower court in said cause.

TURNER, NUZUM & NUZUM,
605 Columbia Building, Spokane,
Washington.

H. E. RAY,
United States Attorney.

O. J. BANDELIN
Sandpoint, Idaho.
Attorneys for Appellants.

Copy received January 20, 1930.

(Title of Court and Cause)

PRAECIPE FOR TRANSCRIPT

Filed January 20, 1930

To W. D. McReynolds, Clerk of the above entitled court:

Please prepare and certify to the Circuit Court of Appeals of the Ninth Judicial Circuit, the following papers and records in the above cause:

1. Indictment.
2. Plea in Abatement of R. E. Weniger.
3. Plea in Abatement of Charles Bloom.
4. Order denying Plea in Abatement as to R. E. Weniger and Charles Bloom.
5. Judgment and Sentence of R. E. Weniger and Bloom.
6. Motion to extend time to file Bill of Exceptions.
7. Order extending time to file bill of exceptions.
8. Notice of Appeal of R. E. Weniger.
9. Notice of Appeal of Charles Bloom.
10. Petition for Order allowing appeal of R. E. Weniger.
11. Petition for Order allowing appeal of Charles Bloom.
12. Order allowing appeal of R. E. Weniger and fixing bond.
13. Order allowing appeal of Charles Bloom and fixing bond.

14. Order extending time to file Assignment of Errors as to R. E. Weniger.
15. Order extending time to file Assignment of Errors as to Charles Bloom.
16. Supersedeas Order as to R. E. Weniger.
17. Supersedeas Order as to Charles Bloom.
18. Petition for reversal as to R. E. Weniger.
19. Petition for reversal as to Charles Bloom.
20. Assignment of Errors.
21. Petition for appeal of R. E. Weniger.
22. Petition for appeal of Charles Bloom.
23. Order allowing appeal of R. E. Weniger, under date of January 16, 1930.
24. Order allowing appeal of Charles Bloom, under date of January 16, 1930.
25. Citation.
26. Praecipe.
27. Appeal Bond of R. E. Weniger.
28. Appeal Bond of Charles Bloom.
29. Journal entries showing full record of trial in case of United States of America v. R. E. Weniger and Charles Bloom.

TURNER, NUZUM & NUZUM
605 Columbia Building, Spokane
Washington.

O. J. BANDELIN,
Sandpoint, Idaho.

Attorneys for Defendants
Weniger and Bloom

Copy received Jan. 20, 1930

H. E. RAY,

United States Attorney

(Title of Court and Cause)

Filed February 5, 1930

IT IS ORDERED that the November Term of the District Court for the District of Idaho, Northern Division, be and the same is hereby adjourned to March 3, 1930 at the hour of ten o'clock, A. M. at Coeur d'Alene, Idaho.

Done in open Court this 3rd day of February, 1930.

J. STANLEY WEBSTER,

Judge.

Received Copy.

W. H. LANGROISE.

(Title of Court and Cause)

MOTION TO SUBSTITUTE BOND

Filed February 5, 1930

Comes now the defendant R. E. Weniger, and moves the court for an order substituting the personal bond executed by R. E. Weniger, as principal and Ellis L. Hale, A. H. Featherstone, Herman J. Rossi, L. C. Wilson and M. L. Savage, as sureties, for the bond on appeal heretofore given on the 31st day of December,

1929, executed by the said R. E. Weniger as principal and Aetna Casualty & Surety Company, a corporation, as surety.

**TURNER, NUZUM & NUZUM,
O. J. BANDELIN,**

Attorneys for Defendant
R. E. Weniger

(Title of Court and Cause)

MOTION TO SUBSTITUTE BOND

Filed February 5, 1930

Comes now the defendant Charles Bloom, and moves the court for an order substituting the personal bond executed by Charles Bloom, as principal, and Ellis L. Hale, L. C. Wilson, Sarah Gearon, J. B. Wilcox and Herman J. Rossi, as sureties, for the bond on appeal heretofore given on the 31st day of December, 1929, executed by the said Charles Bloom, as principal, and Aetna Casualty & Surety Company, a corporation, as surety.

**TURNER, NUZUM & NUZUM
O. J. BANDELIN,**

Attorneys for Defendant
Charles Bloom

(Title of Court and Cause)

ORDER SUBSTITUTING BOND

Filed February 5, 1930

This cause coming on for hearing on the motion of R. E. Weniger to substitute a personal bond, executed by the said R. E. Weniger, as principal, and Ellis L. Hale, A. H. Featherstone, Herman J. Rossi, L. C. Wilson and M. L. Savage, as sureties, in the sum of Five Thousand dollars (\$5000.00), conditioned according to law, said bond to act as a bond on appeal and for costs on appeal, and in all things to take the place of the bond heretofore executed on the 31st day of December, 1929, by said R. E. Weniger as principal and Aetna Casualty & Surety Company, a corporation, surety, and the court having considered said motion, and being fully advised in the premises:

IT IS ORDERED that the bond executed by R. E. Weniger, as principal, and Ellis L. Hale, A. H. Featherstone, Herman J. Rossi, L. C. Wilson and M. L. Savage, as surities, be and the same is hereby substituted for the bond on appeal and for costs for R. E. Weniger in the above entitled cause, and that the bond on appeal heretofore given on December 31, 1929, with R. E. Weniger, as principal and Aetna Casualty & Surety Company, surety, be and the same is hereby exonerated.

Done in open Court this 3rd day of February, 1930.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

ORDER SUBSTITUTING BOND

Filed February 5, 1930

This cause coming on for hearing on the motion of Charles Bloom to substitute a personal bond, executed by the said Charles Bloom, as principal, and Ellis L. Hale, L. C. Wilson, Sarah Gearon, J. B. Wilcox and Herman J. Rossi, as sureties, in the sum of Three thousand dollars (\$3000.00), conditioned according to law, said bond to act as a bond on appeal and for costs on appeal, and in all things to take the place of the bond heretofore executed on the 31st day of December, 1929, by said Charles Bloom, as principal, and Aetna Casualty & Surety Company, a corporation, surety, and the court having considered said motion, and being fully advised in the premises:

IT IS ORDERED that the bond executed by Charles Bloom, as principal, and Ellis L. Hale, L. C. Wilson, Sarah Gearon, J. B. Wilcox and Herman J. Rossi, as sureties, be and the same is hereby substituted for the bond on appeal and for costs for Charles Bloom in the above entitled cause, and that the bond on appeal heretofore given on December 31, 1929, with Charles Bloom as principal, and Aetna Casualty & Surety Company, surety, be and the same is hereby exonerated.

Done in open court this 3rd day of February, 1930.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

BOND ON APPEAL

Filed February 5, 1930

KNOW ALL MEN BY THESE PRESENTS:

That we, R. E. Weniger, as principal, and Ellis L. Hale, A. H. Featherstone, Herman J. Rossi, L. C. Wilson and M. L. Savage as sureties, of the County of Shoshone, State of Idaho, are held and firmly bound unto the United States in the sum of **FIVE THOUSAND DOLLARS (\$5000)**, lawful money of the United States to be paid to it and its successors, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, administrators and successors by these presents.

SEALED WITH OUR SEALS AND DATED THIS 21ST DAY OF JANUARY, 1930.

WHEREAS, the above named R. E. Weniger has prosecuted an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, to reverse the judgment of the District Court of the United States for the Northern Division of the District of Idaho in the above entitled cause;

NOW THEREFORE, the condition of this obligation is such that if the above named Weniger shall prosecute his said appeal to effect, and answer all costs, if he fail to make good his plea, and abide by and perform the sentence of law imposed upon him, then this

obligation shall be void, otherwise to remain in full force and effect.

R. E. WENIGER (SEAL)

Principal.

ELLIS L. HALE (SEAL)

A. H. FEATHERSTONE (SEAL)

HERMAN J. ROSSI (SEAL)

L. C. WILSON (SEAL)

M. L. SAVAGE (SEAL)

Approved this 3rd day of February, 1930.

J. STANLEY WEBSTER,

Judge.

State of Idaho }
County of Shoshone } ss.

Ellis L. Hale, A. H. Featherstone, Herman J. Rossi, L. C. Wilson and M. L. Savage, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn, each for himself, says that he is a resident of Shoshone County, Idaho and a house holder therein, and is personally worth the sum of the said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

A. H. FEATHERSTONE,

ELLIS L. HALE,

L. C. WILSON,

M. L. SAVAGE,

HERMAN J. ROSSI.

(SEAL)

Subscribed and sworn to before me this 21st day of
January, 1930.

G. L. DAVIS,

Notary Public in and for the
State of Idaho residing at
Wallace therein.

(Title of Court and Cause)

BOND ON APPEAL

Filed February 5, 1930

KNOW ALL MEN BY THESE PRESENTS:

That we, Charles J. Bloom, as principal and Ellis L. Hale, L. C. Wilson, Sarah Gearon, J. B. Wilcox and Herman J. Rossi as sureties, of the County of Shoshone, State of Idaho, are held and firmly bound unto the United States in the sum of **THREE THOUSAND** (\$3000) Dollars lawful money of the United States, to be paid to it and its successors, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally by these presents.

SEALED WITH OUR SEALS AND DATED
THIS 21ST DAY OF JANUARY, 1930.

WHEREAS, the above named Charles J. Bloom has prosecuted an Appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, to reverse the judgment of the District Court of the United States

for the Northern Division of the District of Idaho in the above entitled action.

NOW THEREFORE, the condition of this obligation is such that if the above named Chas. J. Bloom shall prosecute his said Appeal to effect, and answer all costs, if he fail to make good his plea, and abide by and perform the sentence of law imposed upon him, then this obligation shall be void, otherwise to remain in full force and effect.

CHAS. J. BLOOM	(SEAL)
Principal,	
ELLIS L. HALE	(SEAL)
L. C. WILSON	(SEAL)
SARAH GEARON	(SEAL)
J. B. WILCOX	(SEAL)
HERMAN J. ROSSI	(SEAL)

Approved this 3rd day of February, 1930.

J. STANLEY WEBSTER,
Judge.

State of Idaho)
County of Shoshone) ss.

Ellis L. Hale, L. C. Wilson, Sarah Gearon, J. B. Wilcox, Herman J. Rossi, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn, each for himself or herself, says, that he and she is a resident and householder in said City of Wallace and Mullan, in said County and State, and is

worth the sum of the said undertaking specified as the penalty thereof, over and above all his or her just debts and liabilities, exclusive of property exempt from execution.

J. B. WILCOX,
ELLIS L. HALE,
SARAH GEARON,
L. C. WILSON,
HERMAN J. ROSSI.

(SEAL)

Subscribed to and sworn to before me this 21st day of January, 1930.

G. L. DAVIS,
Notary Public in and for the
State of Idaho residing at
Wallace therein.

(Title of Court and Cause)

NOTICE OF PRESENTING BILL OF
EXCEPTIONS

Filed February 17, 1930

To H. E. Ray, United States Attorney for the District of Idaho, and to W. H. Langroise and Samuel S. Griffin, Assistant United States Attorneys for the District of Idaho:

YOU, AND EACH OF YOU, will please take notice that we have forwarded Bill of Exceptions in the

above entitled case to the Clerk of the United States District Court, for the District of Idaho, at Boise, Idaho, for filing, and will present the same for certification to the Honorable J. Stanley Webster, Judge, at Coeur d'Alene, Idaho on the 3rd day of March, 1930.

TURNER, NUZUM & NUZUM
605 Columbia Building, Spokane
Washington.

O. J. BANDELIN,
Sandpoint, Idaho.

Attorneys for Defendants
Weniger and Bloom

Service of the foregoing Notice is admitted this 17th day of February, 1930 at Boise, Idaho, by receipt of a copy thereof.

H. E. RAY,
United States Attorney for
the District of Idaho.

(Title of Court and Cause)

SUPPLEMENTAL PRAECIPE FOR
TRANSCRIPT

Filed February 17, 1930

To W. D. McReynolds, Clerk of the above entitled court:

Please prepare and certify to the Circuit Court of

Appeals of the Ninth Judicial Circuit, the following papers and records in the above cause:

1. Answer to Plea in Abatement of R. E. Weniger.
2. Answer to Plea in Abatement of Charles Bloom.
3. Order of adjournment of term until March, 1930.
4. Motion to Substitute Bond of R. E. Weniger.
5. Motion to Substitute Bond of Charles Bloom.
6. Order to Substitute Bond of R. E. Weniger.
7. Order to Substitute Bond of Charles Bloom.
8. Notice of Filing Bill of Exceptions.
9. Substituted Bond on Appeal of R. E. Weniger.
10. Substituted Bond on Appeal of Charles Bloom.

TURNER, NUZUM & NUZUM
605 Columbia Building, Spokane
Washington.

O. J. BANDELIN,
Sandpoint, Idaho.

Attorneys for Defendants
Weniger and Bloom

(Title of Court and Cause)

APPLICATION FOR EXTENSION
OF TIME

Filed Feb. 22, 1930

Comes new H. E. Ray, United States Attorney for

the District of Idaho, and informs the court that heretofore, on the 17th day of February, 1930, the defendants above named served upon him bill of exceptions in the above entitled cause; that under Rule 76 of the United States District Court for the District of Idaho, ten days after such service is allowed for the service of proposed amendments to said proposed bill of exception; that at the present time the February, 1930 term of the United States District Court for the District of Idaho, Southern Division is in session and the applicant, together with the members of his office staff, is engaged in the handling of criminal causes on behalf of the United States at said term and will probably not be able to give any attention to said bill of exceptions during said term; that on March 10, 1930, the Pocatello term of the United States District Court convenes at Pocatello, Idaho, in the Eastern Division of said District and is expected to continue throughout the balance of said month of March, and the applicant and his staff will be required to be at Pocatello, Idaho, and engaged in the handling of matters in which the United States is interested during the whole of said term;

That the transcript in the above entitled cause is extremely voluminous and the proposed bill of exceptions consists of 389 pages and that to properly examine said bill of exceptions and to check the same with the transcript of evidence and the records and files in said cause would require considerable time.

WHEREFORE, applicant prays that the United States be granted to and including the 15th day of April, 1930, within which to serve upon the defendants above named proposed amendments to the proposed bill of exceptions.

DATED this 18th day of February, 1930.

H. E. RAY

United States Attorney for the
District of Idaho

(Title of Court and Cause)

ORDER EXTENDING TIME

Filed Feb. 22, 1930

Good cause appearing,

IT IS ORDERED that the United States Attorney for the District of Idaho be and he hereby is granted to and including the 15th day of April, 1930, within which to propose amendments to the proposed bill of exceptions in the above entitled cause filed with the clerk of the said court on February 17, 1930.

DATED this 20th day of February, 1930.

J. STANLEY WEBSTER

District Judge

(Title of Court and Cause)

ORDER

Filed Apr. 15, 1930

Good cause appearing therefore,

IT IS ORDERED, that the regular November 1929 term of the District Court for the Northern Division of the above entitled court be, and the same is hereby continued to and including the fifth day of May, A. D., 1930.

DATED this 15th day of April, A. D. 1930.

CHARLES C. CAVANAH

District Judge

(Title of Court and Cause)

ORDER

Filed May 5, 1930

Good cause appearing therefore,

IT IS ORDERED, that the regular November 1929 term of the District Court for the Northern Division of the above entitled court be, and the same is hereby continued to and including the twenty-fourth day of May, A. D., 1930.

CHARLES C. CAVANAH

District Judge

(Title of Court and Cause)

MOTION TO STRIKE PART

OF DEFENDANTS'

PROPOSED BILL OF EXCEPTIONS

Filed Apr. 9, 1930

Comes now the plaintiff, United States of America, and moves to strike the following part of defendants' proposed bill of exceptions upon the grounds and for the reasons that the following objections were made by counsel O. J. Bandelin, who was not counsel of record for either R. E. Weniger or Charles Bloom as appears from all the records and files in this case, and more particularly as appears in the minute entry of December 16, 1929, in the case of United States vs. R. E. Weniger et al, No. 3035, a copy of which being attached hereto and made a part hereof and this notion is based upon all the records and files in this case.

1. Strike the objection appearing upon page 9 of defendants proposed bill of exceptions and the ruling thereon.

2. Strike, on page 10, beginning on line 14 thereof from the top the objection of Mr. Bandelin and ruling including to the end of line 17 from the top thereof.

3. Strike, on page 10, beginning on line 14 and from the bottom thereof to the end of the sentence in line 12 from the bottom thereof.

4. Strike, on page 11 of defendants' proposed bill

of exceptions beginning at line 4 from the top thereof and ending at the end of line 7 from the top thereof.

5. Strike, page 131—132 of defendants' proposed bill of exceptions the objections made by Mr. Potts, Mr. Wernette and Mr. Bandelin, and the Court's rulings thereon.

From the examination of the record in this case, it appears that R. E. Weniger and Charles Bloom were represented by the firm of Turner, Nuzum and Nuzum, and by no one else.

Respectfully submitted,

H. E. RAY

United States Attorney for the
District of Idaho

W. H. LANGROISE

Ass't U. S. Attorney for the
District of Idaho

S. S. GRIFFIN

Ass't U. S. Attorney for the
District of Idaho

(Title of Court and Cause)

MINUTES OF THE COURT

December 16, 1929

Exhibit on Motion to Strike

This cause came regularly on for trial before the Court and a jury, H. E. Ray, District Attorney, and

W. H. Langroise and Sam S. Griffin, Assistant District Attorneys, appearing for the plaintiff.

O. J. Bandolin, Esquire, was entered as associate counsel for the defendants Walter Johnson, Mike Kennedy, Jack Malloy, Babe Kelly, Jimmie Ryan, Bertha Strom, Mona McDonald and Regina Dalo.

On motion of the District Attorney, it was ordered that the indictment in its entirety be, and the same is hereby dismissed as to the defendant Henry Kohkonen, and said defendant was discharged and his bond fully exonerated.

The District Attorney assenting to the motion of the defendant Elmer Olson for a continuance, it was ordered that the trial of said defendant be continued for the term.

The trial proceeded as to the defendants Charles Anderson, William E. Coughlin, Waino Pikkerainen, Joseph Speck and Agnes West, who were present with their counsel, N. D. Wernette, Esquire; the defendants Roy Appleton, Herman Arblins, Milford Gardner, John Thompson and Charles Fond, who were present with their counsel, Messrs. Reed & Reed; the defendants Charles Bloom, Anna Tornberg and R. E. Weniger, who were present with their counsel Messrs. Turner-Nuzum & Nuzum; the defendants Arthur J. Harwood, Henry Foss, George Huston, Harcourt Morphy, Charles Ristau, F. O. Welch and John Wheatley, who were present with their counsel Messrs. Gray & Potts; the defendants Regina Dalo, Mike Kennedy, Babe Kelly, John Malloy, Mona McDonald, Jimmie Ryan,

Bertha Strom and Walter Johnson who were present with their counsel Messrs. George T. Walker and O. J. Bandolin; and the defendant Gust Aro who was present with his counsel O. J. Bandolin, Esquire.

The Clerk, under directions of the Court, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper to secure a jury. F. O. Spoor, Frank Taylor, Ben Carrigan, Ole G. Langerak, John Cartwright and R. E. Dunlap, whose names were so drawn, were excused for cause; John W. Snyder, D. R. Holderman, J. J. Clark, Ed Anderson and Ralph C. Pense, whose names were also drawn, were excused on the plaintiff's peremptory challenge; and H. R. Davis, James Gunn, A. V. Chamberlain, F. W. Fitze, F. M. Saunders, Frank Horner, George Parr, C. M. Davis, John Larson and J. E. Wallace, whose names were likewise drawn, were excused on the defendants' peremptory challenge.

(Title of Court and Cause)

ORDER

Filed May 7, 1930

This cause coming on for hearing upon the motion of plaintiff to strike from the Bill of Exceptions certain matters and things as contained in said motion, and the same having been submitted by counsel for defendants, R. E. Weniger and Charles Bloom, on said

motion, and the Bill of Exceptions, and statements, oral and in writing, by said counsel:

IT IS BY THE COURT ORDERED, ADJUDGED AND DECREED that said motion of plaintiff be and the same is hereby denied.

Done in open Court this 5th day of May, 1930.

J. STANLEY WEBSTER,

Judge.

Service Accepted

May 7, 1930

W. H. LANGROISE

(Title of Court and Cause)

BILL OF EXCEPTIONS

Filed May 7, 1930

BE IT REMEMBERED that at the November, 1929 Term of this Court, held in the City of Coeur d'Alene, State of Idaho, in the months of November and December, 1929, the Honorable J. Stanley Webster, Judge of said Court presiding, the above entitled cause came on to be heard, and the following proceedings were had, to-wit:

The defendants, R. E. Weniger and Charles Bloom, filed their Plea in Abatement, which is as follows, to-wit:

PLEA IN ABATEMENT

Come now the defendants, R. E. Weniger, Charles

Bloom and Anna Tornberg, each of his own proper person, and having heard the indictment in this case read, say:

That the grand jury which found said indictment was without power or authority to find or return the said indictment because the offense therein alleged was committed, if committed at all, in the Northern Division of the District.

Defendants further say that the grand jury finding and returning said indictment was one drawn from the Central Division of the District of Idaho at a term of court held for the said Central Division of the District of Idaho, and that the only pretended authority for said grand jury to inquire into and find and return indictments for offenses alleged to have been committed in the Northern Division of the District of Idaho was a direction to the Clerk of the said court by the Judge thereof to draw a grand jury for the said term for grand jury service for the district at large, as shown by the record of the court with respect to the drawing of a grand jury, as follows:

“In the matter of drawing grand jury for
November Term, 1929.

It appearing that a grand jury will be necessary at the November Term of this Court in the Central Division, the Clerk, under directions of the Court, drew from the jury box of said division, the names of thirty persons, which names were incorporated in a venire directing the Marshal to summon the persons therein

named to appear in the court room of this court at Moscow, in said Division, at ten o'clock, A. M. Monday, October 4, 1929, for grand jury service for the district at large. Following are the names which were drawn:

Albers, J. H.....	Russell, Lewis County
Clovis, Clyde.....	Craigmont, Lewis County
Coder, Elmer E.....	Grangeville, Idaho County
Deal, Harry.....	Orofino, Clearwater County
Dwyer, Thos.	Genesee, Nez Perce County
Eastman, Clarence.....	Craigmont, Lewis County
George, U. J.....	Myrtle, Nez Perce County
Gill, E. E.....	Peck, Nez Perce County
Grant, H. T.....	Fletcher, Lewis County
Gustin, A. J.....	Webb, Nez Perce County
Henderson, T. B.....	Peck, Nez Perce County
Kennedy, J. C.....	Lewiston, Nez Perce County
Larson, Albert.....	Lapwai, Nez Perce County
Mallory, H. W.....	Moscow, Latah County
Morris, Victor.....	Potlach, Latah County
Nuxoll, Francis J.....	Greenereek, Idaho County
Olander, S. P.....	Winchester, Lewis County
O'Reilly, Michael.....	Genessee, Latah County
Patton, H. E.....	Grangeville, Idaho Sounty
Peterson, Sam.....	Boville, Latah County
Phillips, Wendell.....	Lewiston, Nez Perce County
Pierce, M. A.....	Cottonwood, Idaho County
Schumacher, F. W.....	Fem, Idaho County
Thain, John.....	Melrose, Nez Perce County
Winters, W. J.....	Myrtle, Nez Perce County
Driscoll, Walter.....	Troy, Latah County

Harbke, Andrew.....	Russell, Lewis County
Miles, J. E.....	Grangeville, Idaho County
Meade, Owen.....	Nez Perce, Lewis County
Saad, George M.....	Troy, Latah County

Defendants further say that the recital in the caption of said indictment that it was in the Northern Division of the District of Idaho is not a true recital, and that the recital in the body of the indictment that it was found by a grand jury of the District of Idaho is not true in fact.

Defendants further say that they had no knowledge of the contemplated indictment, and the impaneling and sitting of said grand jury in the Central Division, and no knowledge that an indictment had been found against them until their arrest thereunder, and no opportunity to plead thereto until their arraignment on said indictment in said Northern Division, which was on the 18th day of November, 1929, and that the plea in abatement to which this plea is an amendment was filed as soon as the same could reasonably be prepared and filed after their said arraignment.

And these defendants say that they were entitled to have said grand jury drawn from the entire body of the district, in the absence of a specific order of the Judge of the said court requiring the grand jury to be drawn from some specific part of the district, and the defendants say that no such order was given unless it be found in the record aforesaid, and that the Clerk construing the said direction for himself, and without

any direction in the premises, drew from the grand jury box grand jurors living only in the said Central Division, and as a result thereof no individual grand juror or grand jurors composing the grand jury which found said indictment was from any part of the District of Idaho other than the Central Division thereof, and defendants say that they are not guilty of the accusations contained in said indictment, and that they were injured and prejudiced in the matter of the impaneling of said grand jury, and in its action in finding said indictment, by the fact that it was a partial grand jury of the district and contained no member or members from any part of the district other than the Central Division thereof, and under the course pursued in the drawing of said grand jury there was no possibility of one or more members being drawn from the vicinage who might have felt an interest in protecting them from an unfounded accusation.

WHEREFORE, these defendants pray judgment of the said indictment, and that the same be quashed.

(Signed) TURNER, NUZUM & NUZUM
Attorneys for Defendants, R. E. Winegar,
Charles Bloom and Anna Tornberg.

P. O. Address: 605 Columbia Building,
Spokane, Spokane County, Washington.

STATE OF IDAHO
 COUNTY OF KOOTENAI } ss.

R. E. WINEGAR, CHARLES BLOOM and ANNA TORNBERG, defendants in the above entitled cause, being first duly sworn on oath, depose and say, each for himself, as follows:

I am one of the defendants in said action. I have read the within and foregoing Amended Plea in Abatement and know the contents thereof and that the same is true, as I verily believe.

(Signed) R. E. Weniger

(Signed) Chas. J. Bloom

(Signed) Anna Tornberg

Subscribed and sworn to before me this 30 day of November, 1929.

(Signed) C. W. Potts

Notary Public for the State of Idaho
 Residing at Coeur d'Alene.

(SEAL)

ANSWER TO PLEA IN ABATEMENT.

Comes now the above named plaintiff and in answer to the above named defendants, admits, denies, and alleges to-wit, denies each and every allegation to said plea in abatement,

Except plaintiff admits that the Grand jury returning the indictment in the above named case at Moscow,

State and District of Idaho, was drawn from the counties comprising the Central Division of the District Court of the United States in and for the District of Idaho, and that said offense specified in said indictment was committed in the Northern Division of said District of Idaho.

And admits the copy of the court minutes set forth on pages one and two of said plea in abatement.

WHEREFORE, plaintiff prays that said plea in abatement be denied.

(SIGNED) H. E. RAY

United States Attorney for the
District of Idaho

That on the hearing of said Plea in Abatement, the following proceedings were had:

November 30th, 1929—Saturday.

MR. NUZUM: We offer in evidence the minutes of the District Court for the District of Idaho, Southern Division, September Term, 1929, for Wednesday, October 9th, 1929.

THE COURT: Any objection?

MR. RAY: No objection.

MR. NUZUM: I will ask that this be marked Exhibit "1".

THE COURT: Yes.

MINUTES OF THE DISTRICT COURT OF
THE UNITED STATES FOR THE DISTRICT
OF IDAHO, SOUTHERN DIVISION, SEP-
TEMBER TERM, 1929.

UNITED STATES OF AMERICA, }
DISTRICT OF IDAHO. } ss.

Twenty-fifth Judicial Day of the District Court of the United States for the District of Idaho, within and for the Southern Division, convened in Boise in said District at nine-thirty o'clock, A. M. Wednesday, October 9, 1929, pursuant to adjournment.

PRESENT: Honorable Charles G. Cavanah, District Judge, and the officers of the Court.

On this day the following proceedings were had, to-wit:

**IN THE MATTER OF DRAWING GRAND
JURY FOR NOVEMBER TERM, 1929:**

It appearing that a grand jury will be necessary at the November Term of this Court in the Central Division, the Clerk, under directions of the Court, drew directing the Marshal to summon the persons therein from the jury box of said division, the names of thirty persons, which names were incorporated in the venire named to appear in the court room of this court at Moscow, in said Division, at ten o'clock A. M., Monday, November 4, 1929, for grand jury service for the dis-

trict at large. Following are the names which were drawn:

Albers, J. H.....	Russell, Lewis County
Clovis, Clyde.....	Craigmont, Lewis County
Coder, Elmer E.....	Grangeville, Idaho County
Deal, Harry.....	Orofino, Clearwater County
Dwyer, Thos.	Genesee, Nez Perce County
Eastman, Clarence.....	Craigmont, Lewis County
George, U. J.....	Myrtle, Nez Perce County
Gill, E. E.....	Peck, Nez Perce County
Grant, H. T.....	Fletcher, Lewis County
Gustin, A. J.....	Webb, Nez Perce County
Henderson, T. B.....	Peck, Nez Perce County
Kennedy, J. C.....	Lewiston, Nez Perce County
Larson, Albert.....	Lapwai, Nez Perce County
Mallory, H. W.....	Moscow, Latah County
Morris, Victor.....	Potlach, Latah County
Nuxoll, Francis J.....	Greencreek, Idaho County
Olander, S. P.....	Winchester, Lewis County
O'Reilly, Michael.....	Genesee, Latah County
Patton, H. E.....	Grangeville, Idaho County
Peterson, Sam.....	Boville, Latah County
Phillips, Wendell.....	Lewiston, Nez Perce County
Pierce, M. A.....	Cottonwood, Idaho County
Schumacher, F. W.....	Fenn, Idaho County
Thain, John.....	Melrose, Nez Perce County
Winters, W. J.....	Myrtle, Nez Perce County
Driscoll, Walter.....	Troy, Latah County
Harbke, Andrew.....	Russell, Lewis County
Miles, J. E.....	Grangeville, Idaho County

Meade, Owen.....Nez Perce, Lewis County

Saad, George M.....Troy, Latah County

MR. NUZUM: I will offer in evidence as Exhibit No. 2 the venire issued to the Marshall for the summoning of the grand jury, together with the names of the grand jury and their addresses.

THE COURT: Admitted.

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

THE PRESIDENT OF THE UNITED
STATES OF AMERICA

To the Marshal of the United States,
for the District of Idaho,

GREETINGS:

This is to command you that you summon the following named persons, publicly drawn according to law, on the 9th day of October, 1929, duly qualified to serve as Grand Jurors, to be and appear before the United States District Court for the District of Idaho at the Court Room thereof, in Moscow, District aforesaid, on Monday the 4th day of November, 1929, at 2 o'clock P. M., then and there to do and receive such matters and things as shall be given them in charge, to-wit:

1. Albers, J. H.....Russell, Lewis Co.
2. Clovis, Clyde.....Craigmont, Lewis Co.

3. Coder, Elmer E.....Grangeville, Idaho Co.
4. Deal, Harry.....Orofino, Clearwater Co.
5. Dwyer, Thos.....Genesee, Nez Perce Co.
6. Eastman, Clarence.....Craigmont, Lewis Co.
7. George, U. J.....Myrtle, Nez Perce Co.
8. Gill, E. E.....Peck, Nez Perce Co.
9. Grant, H. T.....Fletcher, Lewis Co.
10. Gustin, A. J.....Webb, Nez Perce Co.
11. Henderson, T. B.....Peck, Nez Perce Co.
12. Kennedy, J. C.....Lewiston, Nez Perce Co.
13. Larson, Albert.....Lapwai, Nez Perce Co.
14. Mallory, H. W.....Moscow, Latah Co.
15. Morris, Victor.....Potlach, Latah Co.
16. Nuxoll, Francis J.....Greencreek, Idaho Co.
17. Olander, S. P.....Winchester, Lewis Co.
18. O'Reilly, Michael.....Genesee, Latah Co.
19. Patton, H. E.....Grangeville, Idaho Co.
20. Peterson, Sam.....Bovill, Latah Co.
21. Phillips, Wendell.....Lewiston, Nez Perce Co.
22. Pierce, M. A.....Cottonwood, Idaho Co.
23. Schumacher, F. W.....Fenn, Idaho Co.
24. Thain, John.....Melrose, Nez Perce Co.
25. Winters, W. J.....Myrtle, Nez Perce Co.
26. Driscoll, Walter.....Troy, Latah Co.
27. Harbke, Andrew.....Russell, Lewis Co.
28. Miles, J. E.....Grangeville, Idaho Co.
29. Meade, Owen.....Nez Perce, Lewis Co.
30. Saad, George M.....Troy, Latah Co.

And of what you shall have done in the premises do

you then and there make return, together with this writ.

WITNESS the Honorable Charles C. Cavanah, Judge of said Court and the seal thereof, this 9th day of October, 1929.

(Signed) W. D. McREYNOLDS,
Clerk.
Deputy Clerk.

U. S. MARSHAL'S OFFICE

District of Idaho

In obedience to the foregoing Writ of Venire, I have cited and admonished

ANSWERED	TOWN	COUNTY
1. Albers, J. H.....	Russell.....	Lewis
2. Clovis, Clyde.....	Craigmont.....	Lewis
3. Coder, Elmer E.....	Grangeville.....	Idaho
4. Deal, Harry.....	Orofino.....	Lewis
5. Eastman, Clarence....	Craigmont.....	Lewis
6. George, U. J.....	Myrtle.....	Nez Perce
7. Gill, E. E.....	Peck.....	Nez Perce
8. Grant, H. T.....	Fletcher.....	Lewis
9. Gustin, A. J.....	Webb.....	Nez Perce
10. Kennedy, J. C.....	Lewiston.....	Nez Perce
11. Mallory, H. W.....	Moscow.....	Latah
12. Morris, Victor.....	Potlatch.....	Latah
13. Nuxoll, Francis J.....	Greencreek.....	Idaho
14. Olander, S. P.....	Winchester.....	Lewis
15. Phillips, Wendell.....	Lewiston.....	Nez Perce
16. Pierce, M. A.....	Cottonwood.....	Idaho

- 17. Schumacher, F. W...Fenn.....Idaho
- 18. Driscoll, Walter.....Troy.....Latah
- 19. Harbke, Andrew.....Russell.....Lewis
- 20. Miles, J. E.....Grangeville.....Idaho
- 21. Meade, Owen.....Nez Perce.....Lewis
- 22. Saad, Geo. M.....Troy.....Latah

EXCUSED

- 23. Dwyer, Thos.....Genesee.....Nez Perce
- 24. Henderson, T. B.
 (Deceased)Peck.....Nez Perce
- 25. Larson, Albert.....Lapwai.....Nez Perce
- 26. O'Reilly, Michael
 (Unclaimed).....Genesee.....Latah
- 27. Patton, H. E.....Grangeville.....Idaho
- 28. Peterson, SamBovill.....Latah
- 29. Thain, John
 (Deceased)Melrose.....Nez Perce
- 30. Winters, W. J.
 (Unclaimed).....Myrtle.....Nez Perce

F. M. BRESHEARS, U. S. Marshal

By (Signed) E. BROWN, Deputy

MR. NUZUM: We had the oath the other day, Mr. Clerk, that was administered to the grand jury. (Informal discussion.)

MR. NUZUM: I offer in evidence the entire oath.

THE COURT: Let it be admitted. That can be marked Exhibit "3".

OATH TO THE FOREMAN OF THE GRAND JURY

You as foreman of this inquest for the body of the District of Idaho, do swear that you will diligently inquire, and true presentment make of such articles, matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service. The Government's counsel, your fellows and your own, you shall keep secret; you shall present no person for envy, hatred or malice; neither shall you leave anyone unrepresented for fear, favor, affection, hope of reward or gain, but shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.

OATH TO OTHER MEMBERS OF THE GRAND JURY.

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.

CHARLES C. CAVANAH, a witness called on behalf of the Government, after having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

Q. You are Charles C. Cavanah, Judge of the United States District Court for the District of Idaho?

A. Yes.

Q. You have been such for the last two years past?

A. Yes.

Q. At the time of the calling of the Grand Jury for the term of court for the Central Division, Moscow, Idaho, I will ask you, Judge Cavanah, what order if any you gave the clerk for the calling of that grand Jury?

MR. NUZUM: I object to that on the ground that it is all the matter of record.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. As I recall at Boise in open court I entered an order calling a grand jury to meet in the Central Division at Moscow at the next term of court, which I think met the 4th of November, and to inquire into matters for the district and to be drawn from the Central Division. At that time I remember I inquired of the District Attorney, who was then present in court, if it was the desire of the Government to have the grand jury drawn for the district, that is, inquire into matters for the district, and to be drawn though from the Central Division, and he replied, Yes. Then when we convened court at Moscow, and when in impaneling the grand jury, in my charge to them I informed them that they could inquire into matters for the district.

CROSS EXAMINATION

BY MR. NUZUM:

Q. As I understand you Judge, it was before, or

was it after, you entered this order that you inquired of the District Attorney?

A. Before.

Q. Whether he desired the grand jurors who were to investigate offenses in the district at large to be drawn from the Central Division?

A. No. I inquired of the Government if they desired the grand jury to inquire into matters for the district, not as to where they should be drawn. I made the order following that, that they should be drawn from the Central Division, which was the division in which the court convened at Moscow.

Q. This order, I think you have seen it—we have introduced is—that is the order you refer to—was more than one?

A. That was the order—there was only one order made.

Q. As I understand the order which was introduced before here—introduced as an exhibit, is the same—

A. Yes, I have read it.

Q. That is the order you refer to?

A. Yes.

Q. May I ask whether or not the order was a verbal order from the bench, or was it a written order prepared by somebody and filed with the Clerk?

A. It was an order I made from the bench, and I instructed the Clerk to enter the order. I will state that that is the practice we have followed in this district, that I make orders in open court calling grand jurors where the court is to meet the following term we hold.

That is done in open court, and the order is made calling grand jurors where to meet the next coming term.

THE COURT: Any further testimony.

MR. RAY: No.

UNITED STATES OF AMERICA

vs.

R. E. WINEGAR, et al

N. D.

Criminal No. 3035

It appearing that the Grand Jury, having been called for the District of Idaho and sitting in this division, has returned an indictment herein for the Northern Division of the District,

Now, therefore, it is ordered that said indictment, returned as aforesaid, be transferred to the Northern Division of the District for all further procedure.

THE COURT: Proceed with the argument.

The court on the 22nd day of November, 1929 denied said plea, to which an exception was taken, and exception allowed.

Afterwards, and on, to-wit, December 16, 1929, the following proceedings were had: A jury having been duly impaneled, the following testimony was introduced:

RAYMOND D. NEEDHAM: a witness called on behalf of the Government, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Raymond D. Needham.

THE COURT: If the rule is to be invoked with respect to the separation of witnesses, it must be done now.

MR. WERNETTE: I will ask for the exclusion of witnesses so far as the clients I represent are concerned.

MR. BANDELIN: So far as the defendants I represent are concerned I will ask for the exclusion of witnesses.

THE COURT: I think we will have to make an entrance way here, Mr. Ray, and have the names of the witnesses called. Have them come in here. The witnesses for the defense are also included in the rule. It doesn't apply to the defendants themselves, of course.

Witnesses brought in Court Room.

THE COURT: Are there any other witnesses in this case on behalf of the Government or defendants now in the court room; if so, please come around and stand with these witnesses who are standing.

MR. RAY: Some witnesses I have released and will not report here this afternoon.

THE COURT: See that they are admonished not to come in the court room.

THE COURT: All here now. To those of you who have been brought here as witnesses to testify in

this case it becomes my duty to explain to you the legal effect of the rule for the separation of witnesses. When that rule is invoked it means this: That only the witness on the stand testifying may be present in the court room. Before you are called to the witness stand to give your testimony you must not disclose to any person what you are going to testify to, and after you have been on the witness stand and given your testimony, you must not disclose to any person what you have testified to until after this case is finally submitted to the jury. Please bear that in mind. Do not disclose before taking the witness stand what you expect to testify to, and after being on the witness stand do not disclose what you have testified to until after the case is submitted finally to the jury. Of course this admonition does not apply to attorneys in the case, and you may discuss your testimony with them so that they can intelligently know what you are going to testify to. It does apply to all persons except counsel in the case. Now I suggest that you either occupy the jury room here, or keep conveniently near in the corridor so that we will not lose time in getting you when we are ready for you. Is there some place provided for these ladies, Mr. Ray?

MR. RAY: They can go in the grand jury room.

THE COURT: The Government may, if it wishes, select one witness to remain and assist in the introduction of the testimony.

EXAMINATION OF MR. NEEDHAM proceeded as follows:

I have resided in Mullan since May, 1905; am married; a prospector in general mining and working in mines. In the forepart of the year 1927 I was working at the Carney Copper prospect on the South Fork of the Coeur d'Alene river; my family resided in Mullan, but my wife was in New York at the time. I went to Mullen about the middle of April, 1927. The approximate population of Mullan, Shoshone County, is 3000; it is about seven miles from Wallace, the county seat, and is in the State of Idaho. Mining is the principal business around Mullan. I went to Mullan in the spring of 1927 to the office of the City Clerk Martin. Mr. Harwood was chairman of the Board of Trustees and called the Mayor. He said he wanted to see me relative to taking the police job. I met Mr. Wheatley later, and he asked me the same thing.

MR. NUZUM: I represent Sheriff Weniger, and I object to that as hearsay, incompetent, irrelevant and immaterial. I do not know that any talk he had with Wheatley would—

THE COURT: Is Wheatley included here?

MR. RAY: Yes, he is one of the councilmen of the Village of Mullan.

THE COURT: Included in this indictment?

MR. RAY: Yes.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. (Needham continuing) I had not seen Harwood. He told me to see him and wanted me to make an application if their ticket was elected. I did see Har-

wood at his house. He wanted me to put in an application for chief of police if their ticket was elected. I told him I would. The ticket was elected and I did. I applied before the first of May and at the meeting on the 2nd of May I was elected.

Q. MR. RAY: What happened at that meeting. Mr. Needham?

MR. NUZUM: May this all be considered as going in under objection? I cannot see that this has got anything to do with any conspiracy.

THE COURT: The objection is overruled.

MR. NUZUM: May we have an exception?

THE COURT: Yes sir. I think it may be understood now so far as this court is concerned that each counsel may consider it understood that an exception is reserved and allowed to all adverse rulings.

A (Needham continuing) I was given the oath of office by Martin, City Clerk. I went to Mr. Welch, the night police, who is the defendant here, commonly called Army Welch. With him I went to different places throughout the town known as the bootlegging dumps in Mullan that night and he introduced me to different ones throughout the town. We visited Marble Club and Marble Front Apartments, the Coffee House; then there is the Bilberg, the Miners Club, the Mullan Pool Hall, the Marble Front and the Mullan Inn. They were carrying on their regular rotation of business; in the booze joints they were selling booze. The places we visited that night, that was the general business. Mr. Welch introduced me to the proprietors or operators of these

various places. I had a discussion with Mr. Harwood in his drug store the first or second day I was on the police job. He wanted me to make a special effort to keep drunks off the street. I told him the only way to do was to close the bootlegging dumps. He said that we did not want to do that, that the property owners would object. That is Harwood, the defendant here. Harwood gave me a list. It was written in longhand covering the different places to collect from. Some of them he told me he did not know whether they were selling beer or not but to find out, and it is written on the paper "find out." I gave the list to Mr. Rodgers, the prohibition man; that is the original list. I gave the longhand to Mr. Martin. He made two copies of that in typewriting, and I gave one of them to Mr. Rodgers. I compared the copy with the original in Martin's office. Do not know what became of the original. I left it with Mr. Martin.

Q. Handing you now Plaintiff's Exhibit No. 1 for identification, Mr. Needham, I will ask you if that is the list to which you have just made reference.

A. Yes, sir, that is the list.

MR. RAY: We offer that in evidence, your honor.

PLAINTIFF'S EXHIBIT NO. 1
GENERAL FINANCIAL FUND

Central Hotel; Harwood's	\$35.00
Mullan Pool Hall	25.00
Miners Club	25.00

Mrs. C. F.	20.00
Mike Conovich	20.00
Mrs. Stork	20.00
Mrs. Dalo	20.00
Mrs. Mary Smythe	20.00
Spanish Joe (Find out).....	20.00
Mrs. Mary Orazem (find out).....	20.00
Hotel Bilberg	35.00
Mrs. Burns, Noodle Parlors....	\$25.00 and \$15.00 each
Muckers Club	25.00
Fern Hotel Apartments.....	\$25.00 and \$15.00 each
The Bolo	25.00
Marble Front	25.00
Marble Front Apartments, Harwoods.....	\$25.00 and \$15.00 each at 218 Earle Ave.
M. F. LeGore	35.00
Mrs. Andy Hill	20.00
Josephine Pinazza	20.00
Anna Tornberg	25.00
Mrs. Mary Morland	25.00
Wm. Headlund	25.00
Mullan Inn	25.00
Mon-nie (Cabin) Harwoods....	\$25.00 and \$15.00 each at 226 Hunter Ave.
Yellowstone Cigar Store	35.00
Coffee Shop, (Ainsworth).....	\$25.00 and \$15.00 each
Mrs. Pratt (Bath House).....	10.00
Pavolou (Pavola) find out.....	20.00
Flynns Garage (Domingo Zabala) find out.....	20.00
Mrs. Troyer (Mathews)	20.00

A. W. Whaley	35.00
M.D.N.	D.B.R.
6-13-1929	6-13-29

MR. NUZUM: On behalf of Bloom and Weniger, I desire to object as incompetent and immaterial. It has got to be connected up.

THE COURT: Of course, counsel understands that where there is a large number of defendants on trial that testimony may be competent as to a particular defendant and not competent as to others, and the court will have to take care of that in its instructions to the jury. If the testimony is competent as against any defendant, of course, it has to go before the jury.

MR. NUZUM: I understand that, your honor, and I do not want it to be deemed that I had waived it; that is the only reason I suggested it to your honor.

WITNESS NEEDHAM (Continuing) The original was left with Mr. Martin, the clerk of the Village of Mullan. It was given to me by Mr. Harwood, the defendant herein. I made a comparison of the copy with the original. Typewritten statement Exhibit 1 was made by Mr. Martin himself, copied from the original, and I used Exhibit 1 as Chief of Police in performance of my duties in collecting monies. This original list, Exhibit 1, I compared with the longhand original one that was given to me and Exhibit 1 is identical with it. I left the original with Judge Martin who was village clerk then, and is now. The original from which Exhibit 1 was made was given me by Harwood. I have never had the origi-

nal in my possession since it was turned over to Martin when the copy was made. I visited the places written on the list. I showed the list to the people in the beer section where it was in what they called the main stem, we issued a license of \$25.00 a month for places where they were selling intoxicating liquor, but there is a part of this list also that covers places where there was gambling. I collected from the different ones. Some objected to paying the full amount that their business did not justify it, and I took any amount of cases what was offered, and I turned that money into Mr. Martin, the village clerk. He made a copy of the names and amounts at the end of each month and summed it up together and gave a copy to each of the trustees at the first meeting of the next month so they had the list of every name I collected from except a few marked cash. I knew how much to collect from the individuals because I was given the slip in one instance and then the license was given me by Mr. Martin. I took the license slips from him, Martin, and went to the various places and presented them. They gave me \$25.00 for each one. The blanks were filled out for the various places. I turned the money collected to Mr. Martin. I collected those licenses once a month, usually about the first. Collections from other sources which I have testified concerning than licenses about the 14th to the 28th. I went into the office May 2, 1927 and remained until November 9, 1928.

In making collections from persons other than those to whom I delivered licenses, I used a list or paper identified as Exhibit 2, which lists were used during the

period I was in office as chief of police of the village of Mullan. I collected money from the various places or individuals whose names appear thereon, the amount set opposite their names and gave the money to the village clerk, Mr. Martin. The notations in ink containing dates and figures were put on by Mr. Martin and indicate the amount of money I turned in at any particular time. Notations were made in my presence and, after I had completed my work with a slip, I left it with Mr. Martin, the village clerk. Referring to Exhibit No. 1, the first name, Central Hotel, Harwood's, \$35.00 indicated the amount that was collected for running a gambling game at the Central Hotel, operated, when I went in to office, by Si Forsythe.

MR. RAY: Hartley is one of the defendants in this action. Miner's Club, \$25.00", what does that indicate?

A. That was for gambling. The Miners' Club was operated by James Normile and Louis Trikla. Mike Conovich, \$20.00; was selling beer from his home. The next one, Mrs. Stork, \$20.00; I never collected from her. Mrs. Dalo, \$20.00, I never collected from her that much. I collected \$5.00 two or three times only. Mrs. Smythe, \$20.00; I collected once from her. **Q.** "Spanish Joe", Find Out, \$20.00, what does that indicate? **A.** I asked him if he was selling beer, and he said, "No." I did not collect from him at that time, but at one time he was going to give a party and he gave me \$10.00. Mrs. Mary Orazem, Find Out, \$20.00, indicates I should find out if she was selling beer, and she said she

was not. Hotel Bilberg was for gambling; operated by Charley Fond, one of the defendants, Mrs. Burns, Noodle Parlors, \$25.00 and \$15.00. That means \$25.00 for Mrs. Burns, the landlady of the house of prostitution and \$15.00 for each girl. Mucker's Club, \$25.00, was for gambling. Fern Hotel Apartments, \$25.00 and \$15.00 each was for prostitution, operated by Bertha Strom, one of the defendants in the case.

MR. BANDELIN: At this time the defendant objects to any testimony along that line and asks that it be stricken on the ground it does not prove or tend to prove any matter alleged in this indictment.

THE COURT: The motion is denied.

A. The Bolo, \$25.00 was for gambling; Marble Front, \$25.00 was for gambling. Marble Front Apartments, Harwood's, \$25.00 and \$15.00 each, was for prostitution, operated by Babe Kelly, one of the defendants.

MR. BANDELIN: I move that that testimony be stricken on the grounds heretofore stated.

THE COURT: Denied.

WITNESS NEEDHAM (Continuing) M. F. Lagore, \$35.00 was for gambling. Mrs. Andy Hill, \$20.00 was for beer; I collected it. Josephine Pnazza, \$20.00 was for beer; I collected that. Anna Tornberg I did not collect. Mary Morland, \$25.00, for beer and I collected it. Wm. Headlund \$25.00 for place where he sold whiskey. Mullan Inn, \$25.00, was for booze; operated by John Rantella.

Q. John Rantella. And the next is "Mom-nie (Co-

bin) Harwood's, \$25.00 and \$15.00 each, 226 Hunter Avenue," what does that mean?

A. That is for a house of prostitution.

Q. Did you collect there?

A. Not at that time, but I did later.

A. Yellowstone Cigar Store, \$35.00 is for gambling, operated by Charles Hartley and Gus Aro.

Q. The defendants named in this case.

MR. BANDELIN: At this time I ask that that be stricken on the ground it does not prove or tend to prove any issues charged in this case.

THE COURT: Motion is denied.

MR. RAY: You used the phrase "Beer section" of Mullan. What did you mean by that.

A. I meant by that the places outside of the main streets, that is, the two business blocks. By the "Main stem", I meant where they had an open bar similar to the old time licensed saloons. The soft drink licenses were delivered monthly for places in the business section and the subscriptions for liquor taken from the beer section were from the residential part. I know Charles Anderson, commonly called Chuck Anderson. When I was chief of police he was working at the Mullan Inn and the Bilberg Hotel. The Mullan Inn was a liquor dispensary. Do not know that I saw him dispensing any liquor there, but have seen liquor dispensed there many a time. He was a bartender there. The Bilberg sold moonshine, beer and soft drinks. Anderson was tending bar there. Charley Fond was running it. He is a defendant in this case. Roy Appleton, defendant

in this case, was running the Central Hotel bar; Gus Aro was running the Hunter Hotel and also the Yellowstone Cigar; it was a liquor dispensary and the Hunter Hotel also. William Coughlin, commonly known as Blacky, defendant in this case, ran the Bolo, a liquor dispensary and gambling. I collected for gambling from the Bolo as well as furnishing licenses. Charles Fond, the defendant in this case, was at the Bilberg Hotel and associated with the Mullan Inn; the Bilberg was a liquor dispensary; I collected for gambling from the Bilberg. I know Curley Gardner; he was tending bar at the Central Hotel and Mullan Pool Hall, liquor dispensaries. I know Frank Hahn; he was running the Marble Club and the Rockford Cigars, liquor dispensaries. Charlie Hartley had a liquor dispensary at the Mullan Pool. John Jaskara was bartender at the Yellowstone Cigar, a liquor dispensary. Walter Johnson was one of the owners of the Hunter Hotel, a liquor dispensary. He is a defendant here. Mike Kennedy, a defendant here, ran a pop corn stand and liquor dispensary. I issued him a license for soft drinks. Babe Kelly, defendant here, was in the Marble Club first and then the Coffee House, the Coffee Cup and later back to the Marble Club. She was running a house of prostitution and liquor dispensary. I did not issue her a license, but I did collect from her. I know Mona McDonald. She was at the Coffee House and Rex Rooms, conducting a house of prostitution and a liquor dispensary. I collected from her. James Normile, one of the defendants here, was working at the Miners'

Club, a liquor dispensary. Waino Pikkerainen, one of the defendants here, was with Frank Hahn in the Marble Club and the Rockford Cigars, liquor dispensaries. Joe Speck, defendant here, was bartender in the Mullan Pool Hall, a liquor dispensary. Bertha Strom, a defendant here, was in the Fern Apartments, conducting a house of prostitution. She got a soft drink license from the city clerk, but no liquor dispensary there to my knowledge. Agnes West was manufacturing and selling beer from her residence. I collected from her once. She is a defendant here. She thought she should not pay as she had a crippled husband and helped to elect the council. At a council meeting when Harwood, Wheatley, Ristau and Huston, defendants in this case, were present, I took it up with the council. Mr. Huston wanted to let her go without paying, saying she was one of his friends, and he thought he ought to do something for his friend. The other members objected, saying that all should be treated alike, and agreed that she should pay \$10.00 instead of \$20.00, and I collected from her, and they let her off with a payment of \$10.00. I collected from Regina Dalo, one of the defendants, who was selling and manufacturing beer at her residence. Jimmie Ryan was running a house of prostitution.

MR. WALKER: On behalf of Jimmie Ryan, I ask that that testimony be stricken on the ground it does not tend to prove or disprove any matter in issue so far as this indictment is concerned.

THE COURT: I will reserve the ruling on it and

unless a connection is made, counsel may renew his motion.

MR. RAY: I now offer plaintiff's Exhibit No. 2 in evidence. Counsel have examined it.

MR. NUZUM: On behalf of Weniger and Bloom, I object to it as incompetent, irrelevant and immaterial.

THE COURT: The objection to the introduction will be overruled. I will take care of it so far as it may affect anyone who is not included in it.

Plaintiff's Exhibit No. 2 is as follows:

Mullan, Idaho, May 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, Idaho, is \$400,123.00, and a levy of Fifteen (15) mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6000.00; and,

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names:

NAME	DATE	AMOUNT
Stevens Hotel	May acct.	\$10.00
Lee Bill	June 1st '27	40.00

Louie Zodmeznik	June 1st	(10.00
Teka Padhala	\$20.00	(10.00
Eugene Kringo	June 9th	(10.00
City Dairy	\$31.50	(1.50
Mike Kaley		(10.00
Yellowstone		(10.00
Bolo		Pd. (10.00
Thereza Keller	June 15th	(15.00
L. A. Coglas	\$45.00	(20.00
Mary Moreland		(25.00
Mrs. J. P. Ainsworth	June 16th	(25.00
	\$50.00	
Lee Burns		30.00
Mullan Water Works		40.00
Mike Conovich (Transferred to July 1st, List—J.L.M.)		25.00

Received 7-15-27

On Back of Paper—6-11-'27

Subscriptions to

The General Fund

For May \$20.00

For June \$186.50

Mullan, Idaho, May 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trus-

tees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names:

NAME	DATE	AMOUNT
Wm. Hedlund		\$25.00
Mrs. J. P. Ainsworth		25.00
Cash		Pd. 25.00
Mrs. W. H. Knudson		
By Chas. Hartley JM		
Mullan Pool Hall		Pd. 25.00
Miners' Club		Pd. 25.00
Muckers' Club		Pd. 25.00
M. S. LeGore		Pd. 35.00
Chas. Fond		35.00
Josefin Pinazza		25.00
Mary Smythe		20.00
Cash		25.00
Central Hotel	May 28th	Pd. 35.00
Mullan Inn		Pd. 25.00
Mrs. Olka Wickman		10.00
Mrs. Amanda Beck		10.00
Aug. Flink		5.00
Mrs. Ida Anderson		10.00

Mrs.....	20.00
Miss Perl Johnson	45.00
Yellowstone	25.00
Arthur Rumpel	1.50
A. Anderson	2.00
Jack Swanson	15.00
Forward from May 1, Sheet No. 2—	50.00
	<hr/>
	\$513.50

On Back: 5-31-'27
 Current Fund
 Subscription Collections
 Filed May 31, 1927
 J. L. Martin, Treas.

Mullan, Idaho, June 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily

contribute to the General Fund of said Village, the sums set opposite their respective names:

NAME	DATE	AMOUNT
Central Hotel	June 27th	\$35.00
M. F. LeGore		35.00
Josefine Pinazza		25.00
Chas. Fond		35.00
Aug. Flink, \$5; Eugene Mingo, \$10	145.00	15.00
Cash		35.00
Mrs. Anna May Eckel		7.00
Mary Morland		10.00
Mullan Pool Hall		87.00-35.00

232.00

Lee Burns 5.00

Pd. July 5, 1927

J.L.M.

On Back:

6-30-'27

Subscriptions for

June, 1927—General Fund, \$232.00

Mullan, Idaho, July 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Marble Club		(\$35.00
Miners' Club		(35.00
W. E. Coughlin		(35.00
Muckers' Club	\$130.00	(25.00
Lela M. Mackin	7-7-'27 JLM	15.00
Lee Burns (Transferred June List, July 5th		25.00
F. V. H.		25.00
Mrs. J. P. Ainsworth	130.00	40.00
Mike Canovich (Transferred J.L.M.)		
	7-18-'27	25.00
	J.L.M	130.00

(Entered on June List and Transferred)

Lee Burns	Dep. 18th and 21st	55.00
Joe Murphy	By. M. D. Needham	25.00
	as per Dep. Slips	—————
	by Needham	
	\$ 80.00	
	130.00	
	130.00	
	—————	
	340.00	

Red Ink

\$784.69

On Back

7-27-'27

Subscriptions for General Fund

\$340.00

Filed July 27, '27—J.L.M.

Mullan, Idaho, Aug. 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by the Law will be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Mary Moreland	Dep. 7-28-27	(\$20.00
Josefin	\$115.00	(25.00
M. F. LeGore	Entered for J.L.M.	(35.00

Chas Fond	Aug. acct. J.L.M	(35.00
Swanson	Entered for July acct.	
	Dep. 7.29-27, J. L. M.	10.00
Cash	Dep. 8-6-28, J.L.M.	(35.00
Mrs. Anna May Eckel		(25.00
<hr/>		
Eugene Mingo		(10.00
John Knudifson		(15.00
Lela Mackin	Dep. 8-13-27	(25.00
Yellowstone Cigar Store	\$132.50 J.L.M.	(35.00
W. Pikkerainen		(35.00
Mrs. Anna May Eckel		(12.50
H. E. Coughlin		(35.00
Mrs. J. P. Ainsworth		(25.00
K. M. Stark	Dep. 8-16-27	(25.00
Lee Burns	\$140.00, JLM	(55.00
On Back:		
8-16-27		
Volunteer Sub. to General		
Expense Fund.		
J. L. Martin, Clerk.		

Mullan, Idaho, Aug. 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue pur-

poses, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
	Aug. 23	(\$15.00
Bill Clark, Transferred from License		(
Josefin Pinazza		(25.00
Mary Moreland		(25.00
M. F. LeGore		(35.00
Mrs. Dan McGermin		(10.00
Amanda Beck		(5.00
	- - \$157.00	(
Chas. Fond	Dep. 8-30-27	(35.00
Peg	J. L. M.	(7.00
		<hr/>
Cash		(35.00
	\$47.50	(
Mrs. Anna Eckel	D—	(12.50
	J.L.M.	
	\$492.50	
	104.50	
		<hr/>
	\$597.00	

8-31-'27

General Sub. Fund

Filed

J. L. Martin

Mullan, Idaho.....1927

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Eugene Mingo		(\$10.00
Domingo Labala	9-18-27	(10.00
Hunter Hotel	Dep. \$70.00	(35.00
	J.L.M R.M.M	
Mike Canavich		(15.00

W. E. Coughlin		(35.00
Marble Club		(35.00
Flink	9-14-27 140-	(5.00
Ray	J. L. Martin	(25.00
June De Manse	R.M.	(15.00
Mrs. Dot Ainsworth		(25.00
Lee Burns		(25.00
Dan McGinnis		(10.00
Mary Moreland		(40.00
Geosefin Pinazza		(15.00
Amanda Beck		(5.00
Cash		(15.00
Ana Bell	7-27-27	(25.00
Olga Hutchison	\$140.00	(5.00
	Dep.	
	J.L.M.	

On Back

Sept. 1927

Mullan, Idaho, Sept. 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and

maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash		(\$25.00
M. F. LeGore	9-28-27 9-29-27	(35.00
Cy Forsythe	\$130.00	(35.00
	J.L.M.	(35.00
Jack Swanson		5.00
(Transferred to Oct. Acc.)	J.L.M.	

Oct 1, 1927-

Checked J.N.- Entered
and Filed

Mullan, Idaho, Oct. 1, 1927

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and

maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT	
Jack Swanson, (transferred from		(\$10.00	
Sep. Acc.		(5.00	\$15.00
The Hunter-W. Johnson		(35.00	
Cash for Sept.	Dep. 10-8-27	(35.00	
Eugene Mingo	\$85.00 J.L.M.	(10.00	
Rose Mackin		(25.00	
Yaballa		(10.00	
W. Pikkerainen	Dep. 10-14-27	(35.00	
Cash	\$95.00 J.L.M.	(25.00	
Cash, West		(10.00	
			<hr/>
Bol Cash		(35.00	
Macki		(10.00	
Lee Burns		(25.00	
Mona Mc		(15.00	
Irene		(15.00	
H. F.		(25.00	
Jeosefin Pinazza		(20.00	
M. F. LeGore		(35.00	
Helen		(15.00	
Mary	Dep. 10-29-27	(25.00	

Bill	\$335.00	(15.00
Chas. Fond	J.L.M.	(35.00
Central Hotel		(35.00
Swanson		(10.00
Lewey Coglis	Dep. 10-31-27	(20.00
Ray Mackin	\$25.00	(25.00
	J.L.M.	

On Back

Oct. 29, 1927

October General Fund

Collections

Filed

J. L. Martin, Treas.

Mullan, Idaho, Nov. 1, 1927

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily

contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash for Oct.	Received	(\$35.00
	11-4-27	(
	J.L.M.	(
Hunter Hotel		(35.00
Eugene Mingo		(10.00
Sabala		(10.00
June De Manise		(25.00
Marble Club	Received	(35.00
W. H. Coughlin	\$125.25	(35.00
Cash	11-14-27 J.L.M.	(10.25

Cash		(25.00
McDonald	Received	(12.50
Lee Burns	\$62.50	(25.00
Cash	11-21-27 J.L.M.	(35.00
	(transferred to Dec. List) J.L.M.	
On Back		
Nov. 30, 1927		
Subscriptions		
General Fund		

Mullan, Idaho, Nov....., 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is

\$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
H. V. F.		\$25.00
Bill Clark		(15.00
Chas. Fond	Received \$215.00	(35.00
Central Hotel	Nov. 29, 1929	(35.00
M. F. LeGore	J.L.M.	(35.00
Josefin Pinazza		20.00
Yellowstone Cigar		35.00
Cash		5.00
Cash		10.00
Mary Moreland	Received \$30.00	(20.00
Cash	11-30-27 J.L.M.	(10.00
Nov. 30, 1927	2 P.M.	
Subscriptions		
To General Fund		

Mullan, Idaho, Dec. 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash (Nov. List)		(\$35.00)
Hunter		(35.00)
June DeMause		(25.00)
Louie Cogles		(20.00)
Cash	Received	(5.00)
Mingo	\$154.00	(10.00)
Sabala	12-7-27 J.L.M.	(10.00)
Ray Mackin		(14.00)
<hr/>		
Ray Mackin		(11.00)
Maeri		(10.00)
Hellen		(15.00)

W. E. Coughlin	Received	(35.00
Babe Kelly	\$106.00	(25.00
Lee Burns	12-20-27 J.L.M.	(10.00
<hr/>		
Cash		(10.00
Evelyn Stevens		(15.00
Josefin Pinazza		(20.00
Mary Norman		(20.00
M. F. LeGore		(35.00
Cash		(15.00
Central Hotel		(35.00
H. V. F.		(25.00
Cash		(10.00
Lee Burns	Dec. 29, 1927	(15.00
Chas. Fond	\$252.50	(35.00
Jack Swanson		10.00
Cash	Two Hundred Fifty-two fifty cents R.M.M. for J.L.M.	(7.50
Dec. 28, 1927		
Subscription to General Fund		

Mullan, Idaho, Jan. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by

the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	Jan. 4 Pd.	(\$35.00
Mingo		(10.00
Sabella		(10.00
Hellen	Received \$115.00	(15.00
Ray Mackin	Jan. 12, 1928	(25.00
Cogles	J.L.M. by R.M.M.	(20.00
Hunter Hotel		(35.00
A. H. Hyland		(35.00
W. E. Coughlin		(35.00
Yellow Stone Cigar Store	Rec'd. \$146.00	(35.00
Macri	Jan. 14 '28	(6.00
	J.L.M.	
Babe Kelly		(25.00
Bell	Received	(7.50
Clara Hawkins	Jan. 24, 1928	(15.00
Hellen F	\$57.50 J.L.M.	(10.00
Josefin Pinazza		(15.00

Chas Fond		(35.00
M. F. LeGore		(35.00
Central Hotel		(35.00
Mary Moreland		(20.00
Cash		(10.00
H.....	Received	(25.00
Bill	Jan. 30, 1928	(10.00
Cash	\$205.00	(20.00
	J.L.M.	

(On Back)

Jan. 30, 1928

Subscriptions to
General Fund

Mullan, Idaho, Feb. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by the Law will be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily

contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	2-2-28	Pd. (\$35.00
Mrs. West	Received	(10.00
Mingo	Feb. 6. '28	(10.00
Sabala	J.L.M. \$65.00	(10.00
W. E. Coughlin		(35.00
Hunter Hotel		(35.00
A. H. Hyland	Received	(35.00
Ray Mackin	\$145.00	(25.00
Hellen	2-14-28	(15.00
	J.L.M.	
Cash		(25.00
Joe Urquidi		(10.00
Chas Fond		(35.00
Jiosefin Pinazza		(15.00
Central Hotel		(35.00
H. V. F.		(25.00
Cash		(7.50
Helen		(10.00
M. F. LeGore	Received	(35.00
Mary Moreland	\$272.50	(20.00
Cash	2-29-28	(10.00
Hellen	J.L.M.	(25.00
Swanson		(10.00
Anna		(5.00
Flink		(5.00

\$ 65.00

145.00

272.00

 482.00

(On Back)

2-29-'28-

 Sub. General Fund-
 For Feb. 1928

 Mullan, Idaho, 3-1-1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by the Law will be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	3-5-28	Pd. (\$35.00)

Mingo	Received \$55.00	(10.00
Sabala	3-5-28 J.L.M	(10.00
Ray Mackin		(25.00
Hunter Hotel		(35.00
W. E. Coughlin		(35.00
Betty		(4.00
Anna		(15.00
Helen		(10.00
Betty	Received \$200.00	(11.00
Babe	3-24-28 J.L.M.	(25.00
Cash		(20.00
Cogles		(20.00
A. H. Hyland		(15.00
M. F. LeGore		(35.00
Chas. Fond		(35.00
Mary Moreland		(10.00
Central Hotel	Received	(35.00
Cash	\$180.00 3-31-28	(10.00
Cash	J.L.M.	(25.00
Josaphine		(15.00
	\$ 55.00	
	200.00	
	180.00	
	<hr/>	
	435.00	

(On Back)

3-31-'28

March Voluntare
Subscriptions to
General FUND

Mullan, Idaho, Apr. 1, 1928

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by Law to be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash		Pd. \$35.00
Mingo		10.00
Sabella		10.00
The Hunter Hotel		35.00
Chas. Fond		35.00
M. F. LeGore		35.00
Central Hotel		35.00
Ray Mackin		25.00
H.		(25.00
Freda	Received	\$389.50 (15.00
Mary Moreland	Apr. 30, 1928	(10.00

Joe Murphy	J.L.M.	(25.00
W. E. Coughlin		35.00
Jury		7.00
Dorothy		7.50
Cogles		20.00
West		10.00
Cash		5.00
Cash		10.00
Cash		15.00

Received \$15.00

Apr. 30, 1928 J.L.M.

\$389.50

15.00

404.50

(ON BACK)

April Subscription
to General Fund

-1928-

Mullan, Idaho, May 1st, 1928

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by the Law will be made by the Trustees of said Village for general revenue purposes, will produce approximately but \$6,000.00; and

WHEREAS, It requires considerably more than

that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names, to be used for said maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash		(\$35.00)
Mingo		(10.00)
Sabella		(10.00)
Josaphine		(15.00)
Hunter Hotel	Received \$255.00	(35.00)
Bolo	May 14, 1928	(35.00)
Babe	J. L. Martin	(25.00)
A. H. Hyland		(35.00)
Dorothy		(15.00)
Barney		(15.00)
Ray Macklin		(25.00)
H. V. F.		(25.00)
Central Hotel		(35.00)
M. F. LeGore		(35.00)
Jeosefin Pasulin		(15.00)
Mary Moreland	Received \$210.00	(10.00)
West	May 31, 1928	(10.00)
Mingo	J.L.M.	(10.00)
Chas Fond		(35.00)
Kate Peterson		(25.00)
Cash		(10.00)
		\$465.00

(On Back)

May 31st, 1928

Sub. General Fund

For May 1928

Mullan, Idaho, June 1, 1928

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$445,552.25 and a levy of 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

THEREFORE, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of said Village Government:

Rec. \$35.00 6-4-28 J.L.M.

NAME	DATE	AMOUNT
Cash	6-1-28	(\$35.00
Sabella		(10.00
Bolo		(35.00
Leona		(15.00
Babe		(25.00

Barney		(15.00
Ray Mackin		(25.00
Rose	Rec. \$177.50	(7.50
Hunter Hotel	6-14-28	(35.00
Cash	J.L.M.	(10.00
Cash		(25.00
Rose		(7.50
Chas Fond		(35.00
Josefin Pasulin		(15.00
Mona McDonald		(15.00
Mary Moreland		(10.00
M. F. LeGore	Rec. \$177.50	(35.00
Cash	6-29-28	(10.00
L. Cogles	J.L.M.	(20.00
Cash		(5.00
	\$ 35.00	
	177.50	
	177.50	
	<hr/>	
	390.00	

(On Back)

6-30-28

June Sub. To

General Fund-1928-

Mullan, Idaho, July 1, 1928

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$445,552.25 and a levy of 15 Mills, which is the maxi-

imum levy allowed by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

THEREFORE, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	July 3rd	(\$35.00
Cash		(20.00
Cash		(10.00
Bolo		(35.00
Cash	Received \$207.50	(7.50
Hunter	July 14, 1928	(35.00
Ray Mackin	J. L. Martin	(25.00
Babe		(25.00
Barney		(15.00
Margurite		(7.50
Coffee House to July 4	Recd. \$52.50	(25.00
Mona Mc.	July 18, 1928 J.L.M.	(10.00
Cash		(10.00
H. V. F.		(25.00
M. F. L.		(35.00
Mary Norman		(10.00
Jerry Davis		(7.50
M. F. H.		(25.00

Jiosephin		(15.00
Chas Fond		(35.00
Cash by West		(10.00
Cash	Received \$177.50	(5.00
Macri	July 30, 1928	(5.00
Monia	J.L.M.	(5.00
		<hr/>
		\$437.50

(On Back)

July 31, 1928

July Subscription

To General Fund

Mullan, Idaho, Aug. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$445,552.25 and a levy 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

THEREFORE, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	8-1-28	(\$35.00
Bolo		(35.00
Hunter Hotel	Received \$130.00	(35.00
Mona McDonald	8-15-1928	(15.00
Cash	J.L.M.	(10.00
Jiosefin Panazza		(15.00
Pastime		(25.00
Coffee Cup		(12.50
Chas. Fond		(35.00
The Hub		(25.00
Mary Norman		(10.00
N. V. F.		(25.00
Jerry		(15.00
M. F. LeGore		(35.00
Cash		(10.00
Cash		(10.00
Cash	\$247.50	10.00
Jimmie Ryan	—————	(15.00
Cash	377.50	(5.00
(On Back)		
9-1-28		
Aug. Cash Sub.		
To General Fund		

Mullan, Idaho, Sep. 1- 1928

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$445,552.25 and a levy 15 Mills, which is the maxi-

sum levied by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

THEREFORE, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of said Village Government:

NAME	DATE	AMOUNT
The Hunter Hotel		(\$35.00
Coffee Cup		(27.50
Cash		(35.00
Cash	Recd. this	(10.00
Bolo	account—J. L. Martin	(35.00
Cash	\$162.50	(20.00
Jiosefin		(15.00
Coffee Cup		(32.50
H. V. F.		(25.00
Mary Moreland		(10.00
Jimmie Ryan		(25.00
Chas. Fond	Received \$217.50	(35.00
Cash	to Sep. 29, 1928-	(10.00
Macri	J. L. Martin, Treas.	(5.00
Cash		(5.00
Evalin		(10.00

M. F. Legore Store	(35.00
West	(10.00
(On Back)	
9-29-'28	
Subscriptions to	
General Fund	
Sept. 1928	

Mullan, Idaho, Oct. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Village of Mullan, County of Shoshone, State of Idaho, is \$445,532.25 and a levy 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

THEREFORE, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of said Village Government:

NAME	DATE	AMOUNT
Cash	Oct. 10th, 1928	(\$35.00
Cash		(25.00

Hunter Hotel	Hunter	(35.00
Bolo		(35.00
Mingo	Received \$150.00	(10.00
Coffee Shoppe	10-15-28	(7.50
	J.L.M.	
Cash		(7.50
Frank Windes		(12.50
Marjery		(7.50
Joesfin		(15.00
Coffee Cup		(25.00
Evelyn Stevens		15.00
H. V. F.		(25.00
D. Connelly		(35.00
June DeMouse		(7.50
Mary Norman		15.00
Chas. Fond		(35.00
M. F. LeGore	Paid	(35.00
Jimmie Ryan		25.00
Babe Kelly	Received \$300.00	(25.00
Coffee Shop	10-30-28	(7.50
Cash	J. L. Martin	5.00
Cash by W.		(10.00
Nov. 21st Cash		(20.00
(On Back)		
Subscriptions to		
General Fund		
Oct. 1928		

WITNESS NEEDHAM: (Continuing) With reference to some of the people who did not want their names known, living in the residential section, whatever money they gave me I would write down "cash" or sometimes they would write it themselves. In other instances they signed themselves, in nearly all of the cases. I got these slips, Exhibit No. 2, from the Village Clerk, Mr. Martin. Exhibit No. 2, under date of May 1, 1927, "Mullan Pool Hall by Charles Hartley, \$25.00, T. D." means \$25.00 for privilege of gambling. Miners Club, same purpose. Muckers Club, \$25.00 for gambling. In addition to gambling, the Muckers Club was a booze dispensary; LeGore, \$35.00 for gambling; Charles Fond, \$25.00 for gambling in the Bilberg Hotel, also had a soft drink license. Josephine Pnazza, \$20.00 was for a license or permit. It was down below the depot in the residence section. Central Hotel, \$35.00 privilege for running gambling for that month. Mullan Inn, \$25.00, for gambling. Central Hotel and the Mullan Inn also paid a soft drink license and whiskey was sold there. Coughlin, \$25.00 for gambling in the Bolo, also had a soft drink license where whiskey was dispensed. Miners Club, \$25.00 for gambling.

Q. Now, why did you present this list each month just to the particular individuals rather than to the village generally as would indicate from the heading of this list, Mr. Needham?

MR. NUZUM: I think that is immaterial, if your honor please.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. The first night after I was elected it was discussed about these collections in open meeting, and that list was spoken of, and these various places where they sold beer was spoken of also, and prior to my time, a great many of them had been—

MR. NUZUM: Just a moment, I don't know what this man can know about prior to his time.

MR. RAY: Q. You mean prior to the time you were chief?

A. Yes sir. How I know is because I have been in the office and saw the things come in there.

MR. NUZUM: I object to it as incompetent, irrelevant and immaterial. He could not know what other people were doing.

THE COURT: Overruled. If he knows of his own knowledge, he may testify.

Well, I do know that they came in and paid the Village Clerk. And at this meeting they designated that I should do the collecting. Four councilmen were present, Harwood, Wheatley, Ristau and Huston and Foss.

Q. Named in this indictment?

A. Foss instead of Huston. I went to these particular people because Harwood instructed me to. I solicited legitimate business houses. I visited Dr. Keys, who ran the Mullan Water Works, the Mullan light people, and Judelaws, that ran the dairy outside of Mullan. Keyes gave \$40.00, the light company promised \$1.00, but never paid, and Judelaw gave \$1.50. That

was not monthly; just once. I delivered nothing but a yearly soft drink license to any legitimate soft drink place in Mullan while I was Chief. This was to Mr. Harwood and some people that run the House of Quality, now the Dewdrop Inn, who were not to my knowledge dealing in liquor.

Mr. Harwood paid \$12.00 a year for each place and he had two and the other one paid \$6.00. I was discharged in November, 1928. I went over to the City Clerk's office afterwards and I went back and saw Harwood. I says, "Now, Mr. Harwood, you fellows have asked me to resign, so I will ask all of you to resign and we will call it square." He says, "Well, it might be well to do so." I said, "If you look at it from that light I am sure it will," and I says, "Now", I says, "if you don't I will spend the last dollar I have got in the world to have you fellows put out of here." I did not serve any more after November 9, 1928. None of these places of business paying license or subscription month by month were molested by me or any other officer of the village so far as I know while so paying. I only had one difficulty in collecting. That was with Mike Hahn. When Hahn did not pay he was arrested and later the money was paid by Pikkerainen, and he went back to his place. He was arrested for refusing to pay the license. There were two regularly employed police officers, myself and Welch, the defendant here, I have been with him to various places I have designated to you, that is, those that paid the soft drink license. They were run openly. The operators paid no concern to me or other officers who

went in. The night man did not interfere with the operations to my knowledge. I made no collections except those shown on the license and Exhibit No. 2. The proceeds were turned over to the Village Clerk and the amount and name of each individual appears on the list on the monthly report to each councilman. (Reading of Exhibit No. 2 to the jury was waived.) I attended a monthly meeting of the council regularly; do not think I missed a single one. At the meeting of the council the places dispensing liquor, prostitution and gambling were mentioned quite frequently. The council were surprised I was getting as much as I did. And I was also instructed to use my own discretion as to the amount I collected in outlying districts. If business was not very good, to cut down on the amount, and I governed myself accordingly.

The members of the council during my term of office were Harwood, Wheatley, Ristau, Huston and Foss. The council except Foss attended pretty regularly. I know Charles Bloom, the defendant. He has resided in Mullen about 23 years; might have been away a little of the time. During the last several years he has lived in Mullan. His home is there. He is deputy sheriff of Shoshone County. He was deputy sheriff while I was chief of police. I have seen Bloom quite a number of times during the period concerning which I have been testifying. He was in the places I have testified about, and while he was there they were carrying on their ordinary business. I have seen him in the Bolo, and I have seen him in the Bilberg and the Mullan Inn

and Mullan Pool Hall. I visited these places I have testified about almost daily while I was chief of police. They were not all operating continuously. Some closed down temporarily and the same general condition existed while I was chief of police of Mullan. I have made a note of how much I collected and it amounted to \$697.50 per month, for liquor, prostitution and gambling, both on licenses and Exhibit No. 2.

CROSS EXAMINATION

BY MR. POTTS:

A. When I was discharged I told Harwood I would have them put out of office if it costs me the last penny I got and takes the rest of my life. I did not tell them I would send them to the penitentiary if they did not reinstate me as chief. Since then I informed the government officials what was transpiring in Mullan and have helped them in every way possible to do it. I told Julius Johnson about the 20th of November, 1928. I told him I was going to have the trustees put out of office. My aim was to have them put out of office. I thought they had not done the square thing by me. I do not recollect saying that I was going to send Harwood and Huston to the penitentiary if it was the last act of my life. I do not recollect stating to Mr. Davis that if I was not reinstated as chief of police I would get even with Huston and Harwood even if I had to go to Washington, D. C. to do it. I would not say that I did not say it. I referred to the system carried

on while I was chief of police under my discretion as an officer which I exercised.

In some instances the amount I should ask was in my discretion, and I exercised it. I told the Board of Trustees at various times what I was doing. In fact every meeting it was laid out before them and they saw it and it was all explained to them and, as I said before, the Judge made a copy of what I was doing and each and every one of them was given a copy of this. I saw the copy. It contained the names of each individual from whom I collected except where it was marked cash. Each member of the council had a list containing the names and amount of each donation that I had collected. I turned in the names and amount every month to the clerk. With reference to the licenses the clerk issued those once a month and placed it in my hands to collect the money. The clerk issued the licenses under the ordinance. As to the donations I collected the clerk had no record of them until I turned them in to him. I went to see those who was on the donation list and got the people to donate, and if the people did not donate I passed them up, and I would go again next month to see if I could get them to donate and if they did, all right. Some times they had various reasons for declining. At the present time I do not remember a single individual who did not make some donations. I do not remember whether Charles Johnson was a member of the Board of Trustees and nominated Army Welch for chief of police or not. I thought he had resigned before that. There was a day and night policeman designated

in the office at Mullan and Welch was night policeman. He took me around to the various places. I do not remember how long we spent. I do not say in every instance you could tell where liquor was being sold or houses of prostitution being conducted when you walked down the street. You could not tell unless you go inside of the place when walking along the street. Might tell by drunks going in and out the place whether booze was being sold there. I got my information by using my sight and hearing and by smell. I do not remember which place we went first; do not remember how many places we visited; went into the Fern Apartments; by reputation that was a house of prostitution. Went to the Coffee House, a house of prostitution; went to the Bilberg Hotel, a booze dispensary; went to the Miners Club, a booze dispensary and gambling; Mullan Pool Hall. I had taken the oath of office before I became chief of police and I continued in that office for a year and a half knowing what the conditions were in Mullan, I do not know whether I built up the collections or not. I collected all the license money except one place. I never read the license ordinance of Mullan. I was instructed by the judge what the ordinance was; I mean Judge Martin. The first of the month he gave me the licenses written out, signed by him as Village Clerk. I delivered the licenses to the licensees. Some were paid directly. The yearly licenses I collected generally. Some peddlers got a license directly from the clerk. I collected from the dry goods, hardware, drug stores, telephone company, barber shops

and every line of business conducted in Mullan. I collected from Harwood. He had a soft drink establishment along with drugs. He had a soda fountain and sold pop. I do not know about the classification. It was my understanding that soda fountains was under a different classification than places where they dispensed booze. Every place in Mullan aside from Harwood's two drug stores and the Dewdrop Inn sold booze. I will not say that every pool room, pool parlor in Mullan was a booze dispensary. Not all of the gambling houses were booze dispensaries. Lagore's place was gent's furnishings, cigar and card room. \$35.00 was for gambling. No intoxicating liquors sold. \$35.00 on the contribution slip and the so-called soft drink licenses were issued to places they had doped soft drinks, which in fact were nothing short of booze dispensaries. I collected \$35.00 from Lagore; he ran a gent's furnishing store with card room attached. The \$35.00 was for gambling. He did not sell any liquor. I was there frequently; played cards myself. The games were gambling games principally poker and at times what they call "21" or Blackjack and some pinochle games were played with cards and chips, mainly among the miners. They lost their money to each other, but there were some professional gamblers. The house made a percentage which was pretty large. The profits went to the house. The population of Mullan on the streets was made up of men from the mines. The Morning Mine outside of the city limits employed 800; Gold Hunter about 150 and prospects around there employ-

ing men. Mining was the principal industry with all of the mines located outside of the village limits. A large number of the men were floating type without families. I believe, however, the majority had families in Mullan. The floating type were usually around the town during their spare time. I took up the question of Agnes West at the meeting of the village board of Mullan. I do not know of any record. I was present at all of the meetings of the council and do not remember of any record being read concerning Agnes West's matter. This matter came up in September, 1927, according to my best recollection. There was a controversy with Frank Hahn submitted to the council and I was instructed by Mr. Harwood and Mr. Wheatley not to permit him to open the place of business on the street and they instructed me to collect a license from him. He refused and I arrested him. A good many of the items on the subscription list were entered as cash items. They did not indicate from whom it was collected. The list dated November 1, 1927 has a cash item of \$35.00. Harwood was never apprised of that or any other member of the board. Another item of \$25.00 is the same condition. They went into the records and I was the only one who knew who made the payments.

CROSS EXAMINATION

BY MR. BANDELIN:

WITNESS NEEDHAM: Bertha Strom ran the

Fern Apartments, a sporting house; I did not make any collections from her at all. She got the license from the city clerk. So far as I know there never was any liquor dispensed there. I do not remember having any talk with her. The girls paid \$15.00 a month which I collected. Jimmie Ryan sometimes paid for some of the girls at the judge's office but not to me. The money was not paid for liquor and had nothing to do with the violation of the liquor law. She was running a sporting house. I made collections from her. The only thing I told her was I told her I wanted a certain amount of money from her. I do not remember when it was but she was there when I left and had paid monthly when she was there. I knew Babe Kelly. She was running the Marble Front; collected \$25.00 and \$15.00 for prostitution and also the privilege of selling beer and moonshine if they wished. I never talked with her with reference to the matter. I never discussed what the purpose of collecting the money was. I never discussed selling liquor. I knew Mona McDonald; collected from her for running a house of prostitution, and selling booze also. I never discussed with her the selling of liquor. I ordered her out of the country in August, 1928. In August, 1927 I met Babe Kelly and I says, "We might just as well have a settlement first as last or an understanding", and I told her if she wanted to stay it would be necessary for her to comply with the requirements the same as the other women did. That is all I said to her. I went into the rooms of the women, in and out of their houses every day. I did not know a girl named

Peggy and did not spend an hour or two with some of the other women in their rooms. I had no trouble with Mona McDonald on those grounds. I had no trouble with Babe Kelly. The Yellowstone was run by Gus Aro and I did not know his brother, Jaskara was running the place until he was arrested in June. The Hunters Hotel had approximately 18 rooms and Leauro Aro was running that part of the time. I know Gus Aro and Walter Johnson, had a contract with Judillarro where they were running the place. I do not know who was running it before that time.

CROSS EXAMINATION

By MR. WERNETTE:

Joe Speck never paid any money and Charles Anderson never paid any money. I saw beer in a keg or barrel at Agnes West's and a bottle setting along side. I never saw her sell any beer. In June, 1927 I asked her for a donation and told her the council expected all who were handling beer to make contributions about alike. Showed her the list that Harwood gave me, Plaintiff's Exhibit No. 1 with the names on the list and the amounts opposite their names. I showed her the other lists. I discussed the list with her. We were alone. She never signed the list. I wrote "cash by West" in every instance; do not remember how often she paid. I know that her husband was an invalid and had to be taken care of as a child and that she was taking care of him, and she said she did not feel that she should pay

for that reason. I went there several times before I got money and \$10.00 is the most she ever paid and that was infrequently. I never closed a place because they did not pay. I merely solicited the same as I did with Mrs. West. Harwood, Wheatley, Ristau and Huston were present at the meeting when her matter was discussed. Mr. Huston said her husband was an invalid, was not able to walk and had to be taken care of like a baby and he did not think the council should ask either Mr. or Mrs. West for a contribution. He said she was a friend of his and that the council should be entitled to aid their friends. I have no feeling toward Mrs. West. I do not like her brother Mr. Anderson and had some trouble with him when he was arrested. I do not know what became of the case. Frank Hahn was in the Marble Club in 1927 and changed to the Rockford Cigar and I made collections from him. Pikkerainen was interested with him. I collected from both. I do not know where Hahn was when I collected from Pikkerainen. Hahn was not there when Pikkerainen paid. We discussed the license; I did not have any talk with Hahn about handling liquor. I did ask about gambling from Pikkerainen and Hahn both; that was in the summer of 1927. I saw gambling at the Bolo. I did not have any talk with Mr. Coughlin about liquor transactions there. In June he was fixing up the Bolo to open the bar about July 4th and he asked what the license was; what would have to be paid for them in order to get a soft drink license. I never went behind the bar to see what they were handling I never bought

a drink. I have seen sales over the bar, dozens of times between July 4, 1927 and October, 1928; practically every day in all of the liquor places. I did that to keep cases on the fellows who were drinking and see how drunk they were getting.

CROSS EXAMINATION

By MR. NUZUM:

I saw Bloom frequently in Mullan. His family lived there and I had occasion to call him by calling his residence. I did not keep any record of how much of the time he was there. He was a deputy sheriff. I do not know about his being a jailer. I saw him every few days. He was the deputy sheriff in that section of the country. I do not remember how many times I called him when I was chief of police. It was several times. Do not know what he was wanted for. I do not know how many times I saw him at the Bilberg, perhaps several times. He was sometimes talking with the boys, sometimes he would be drinking a glass of beer. I do not know whether it was near beer or genuine beer. I have seen him looking for people there with papers and processes to serve; do not know how many times when I saw him there he had papers to serve; do not know whether he had them all of the time he was there. I have seen him drink, what I thought was moonshine whiskey and his breath would indicate he had drunk it. I do not know the exact number of times but it was several times. I was in condition so I could detect the

odor of moonshine. I had not drunk myself. I have drunk moonshine in small quantities. Since prohibition went into effect I have not drunk as much at one time as would be termed an ordinary drink of whiskey; simply to satisfy some fellow who claimed his moonshine was good. I saw Bloom in the Bilberg more than once and on the street; saw him in the Bilberg several times; would not give an instance; cannot state the date. In most instances Charlie Fond was there but I would not name anyone else. Charlie Fond was drinking with him more than once. I do not know whether it was half a dozen times. I have no dates. It was during my tenure in office. I do not remember the first or last time, but it was after the first of May, 1927 and before the 9th of November, 1928 and that is as near as I can fix it. I do not remember any other individual than Charley Fond who was there. I saw him at the Bolo during the time the Bolo was opened up; after Coughlin went there in July until I got off the job. I did not see him drink there. I did not see any liquor sold in his presence. The Bolo was frequented by men generally. I do not know whether he was there on business or not. I would not place him at the Mullan Pool Hall. I saw him at the Mullan Inn and also in the pool hall. I do not remember the times. He just came in and out; did not take a drink. I would not say whether or not liquor was being sold when he went in. In the pool hall I only remember once after I was off the job as police; I do not know his business there. I am fifty-three years old, married; just have a wife; married Aug-

ust, 1918 and lived with wife all of the time. I have worked as a prospector and also as a policeman; started prospecting in 1889. I have been in the Mullan country since 1905. I never had engaged in liquor business; never did; never engaged in gambling as a business; I never have been a gambler or saloon man or bootlegger; have always been a law abiding citizen. I took the oath of office that I would uphold the laws of the nation, state, county and the village and was sworn by raising my hand. I did not understand what the laws of the state were with reference to the liquor traffic at the time I took office.

Q. Did you think that the laws of the State authorized the open selling of booze?

A. I did not know just what the laws were until the time I took office.

Q. Didn't you know that Idaho had declared a bone dry law before the Volstead Act was passed?

A. I knew there was a dry law that went into effect as I remember in 1915.

Q. Now, what do you mean by dry law—as affects liquor or what?

A. Well, you would naturally suppose that it affected liquor.

Q. Then you did know there was a bone-dry law in Idaho, didn't you?

A. I said I did not know the substance of this law or wording of it, is what I meant.

Q. You knew that the traffic in liquor was prohibited in Idaho—

A. Before the Volstead Act.

Q. So that you knew that it was unlawful to sell liquor under the state law.

A. But what had transpired since that time I did not know until I read the law in the statute books that was provided in the Village and then I learned what the law really is.

Q. When did you learn that?

A. After I got in as policeman.

Q. How soon?

A. It was within the first fifty days.

Q. Within the first fifty days. You know that there was such a thing as a Volstead Act?

A. I did.

Q. And you knew that prohibited the traffic in liquor?

A. I did.

Q. Did you have any qualms of conscience when you were going to those people and you were collecting license fees for them to violate the Volstead Act and the state law; did it bother you at all?

MR. GRIFFIN: Objection; that is immaterial.

THE COURT: Overruled.

MR. NUZUM: Q. Did it bother you at all?

A. It did not bother me, no, because the same conditions existed there before I went there.

Q. Go on, finish your answer.

A. The same conditions had been going on before I went on and I when I was asked to do this, I made up my mind then and there that I would save what evi-

dence I had and the first government official that came along I would tell them what was really happening in the Town of Mullan.

Q. Then you were doing this not because you thought the law had been violated before and it was all right to do it now, but to get evidence, was that it?

A. Well, I saved all the evidence or the principal evidence that I thought—

Q. Please answer my question. You were doing this to accumulate evidence for any government official that might come along?

A. I intended to save that, yes sir.

Q. You were doing that then, I want to be fair with you—

A. All right.

Q. (Continuing)—and not because you thought it had been the practice and allowable but to get evidence?

A. I expected that sooner or later that this would be blown up.

Q. Will you please answer that question. I think, if your honor please, I am entitled to it.

THE COURT: Yes, I think that question is capable of a more direct answer. Read it, Mr. Deavitt, please. (Question read) Answer the question.

“A. Well, I was just trying to get it just the way—I had in mind that I was going to do what was asked of me and the first government official that came along I was going to give him the evidence, which I did”.

I was not going to turn over the evidence to the government unless I was asked. I would not have done

it of my own accord and if I had not been requested I never would have done it. After I was discharged I told the council that I would go to Washington, D. C. with the information if necessary, and I did intend to give it whether they asked me or not. The thought came to me when I was discharged that I had made up my mind positively I was going to do that. I had given the information to Julius Johnson prior to my discharge. My discharge made me active instead of dormant. I resented the discharge because I did not think I deserved it.

Q. Did you want to continue on in that violation of the law yourself?

A. Not necessarily.

Q. You know it was necessary if you continued in collecting the money for what you say was for the privilege of selling booze; you knew that, didn't you?

A. I knew that it was a violation of the law, yes sir.

Q. And did you want to continue in the violation of the law?

A. Well, I would have stayed my term out if I had not been discharged, but I would not have asked for it again.

I have known Julius Johnson since June, 1927. Met him at a raid in Mullan; I did not show him the list dated May 1, showing the contributors. I do not know whether I had the list, but I knew where it was. I told him of the practices we were conducting there. I told him I had the list given by Mr. Harwood, Exhibit No. 1, and I told him that we were collecting licenses from

different booze dispensaries. I did not think it was necessary to show this list to Johnson. I told him about it and if he wanted to see it I would have proceeded to show him.

Q. "Did Johnson tell you to go on and make these collections?"

A. He did not say anything about it, no," and I kept on making these collections until 1928. I knew it was a violation of the law.

Q. "Well, as a law abiding citizen and a man of a family, I say did that bother you, bother your insides at all?"

A. Insides? Well, I just figured that when the time came, why, I would give this information to the government." I did not ask any immunity from any one. I do not know whether I knew it or not, if I went before the grand jury that would give me immunity. I have been told but I have seen since then a ruling or an article in the paper coming from the Attorney General that there is a law to that effect, but I did not know it at that time. I did not know if they used me as a witness that I would not be prosecuted. I knew that before I went before the grand jury, but I had given all the information I had prior to that time. They did not ask me if I would testify before the grand jury. They did not place me under arrest or under bond. I have not been confined today. I have not been prosecuted. I have not been paid anything except my witness fees. Cooper, the government agent, told me if I went along and the still was captured I could possibly get com-

pensation for my efforts. This was in June of this year. I was on the petit jury in November, 1928. I did not give any information with reference to the situation in Mullan although I already been fired.

CROSS EXAMINATION

BY MR. REED:

Charlie Johnson paid \$25.00 per month to me for the Bilberg. He was supposed to own it. He had bought the building under contract in 1925. I have handed Johnson a license a number of times. The soft drink license for one month; no mention of liquor on the license. I know Curley Gardner at the Central Hotel. He paid license once at the Mullan Pool Hall. for Charles Hartley. Hartley was in jail. I did not talk with Gardner about him running the place for himself. He ran gambling at the Central. Appleton was at the Central running the place. That included gambling and the bar. I do not know whether Herman Arbliss ever paid any money. I knew nothing about a license in his name. I talked with Charles Fond myself; never discussed what the license was for; never discussed with Appleton what the license was for and the licenses were delivered so far as the description is concerned for just what they really were—licenses for soft drink establishments. It was my understanding prior to that time that it was issued in the first instance for the privilege of selling booze. That was my understanding. I never entered into any discussion with

them about it. It was an established ruling that was going on at the time and just was continued. I never entered into any discussion with any of them about it. I just allowed the thing to go along as it had been going.

FURTHER CROSS EXAMINATION

BY MR. NUZUM:

I am sure I saw Charles Bloom drink moonshine in both 1927 and 1928. Fond was there on both occasions, sometimes he drank with Bloom and sometimes not. I have seen them both take more than one drink but I could not state who served. I called Mr. Bloom up once about the base ball player. I wanted him from Wallace. I do not recollect calling him at any other time except to help me, but he was called for other people. I only called him for different people.

CROSS EXAMINATION

BY MR. WALKER:

I only collected from Regina Dalo two or three times.

RE-DIRECT

BY MR. RAY:

Q. Were any of these contributions concerning base ball teams and so on taken from the citizens generally or just from these bootleggers, prostitutes and gamblers?

A. I do not know because I never took up a subscription of that kind.

Q. With respect to Charles Fond, did you have a conversation with Charles Fond on February 24th, relative to this whiskey business in Mullan?

A. Well, it was sometime around the 24th—in Mullan, but I am not certain whether it was in what is known as the Mullan Pool Hall or the Stockholm, and he told me at that time—

MR. NUZUM: I think it is incompetent.

MR. RAY: They have gone into it, your Honor.

THE COURT: The objection will be overruled.

A. He told me that a committee of the bootleggers had through their committee interviewed the council and had agreed to pay twenty-five dollars a month for the privilege of running their bootleg dumps without police interference. Immunity was never promised me by anyone.

With respect to the cash items on Exhibit No. 2, the people did not want their names on the list and they gave me the money and I wrote "cash." At the first meeting of the council it was agreed that I should do the collecting and suggested giving me a percentage on what I collected. I said I wanted straight salary and they agreed they would give me a raise but did not say how much and in two or three months they agreed on the price, and I was paid my back salary which was fixed at \$175.00 per month. We would put the drunks back inside of the different dispensaries where they were

selling liquor, and if they kept going out we would lock them up until they were sobered up, and after October, 1927 we sent them home without bringing them before the judge. I was given instructions by members of the council to use my discretion with reference to collections from persons mentioned in Exhibit No. 2. The collections on Exhibit No. 2 with one or two exceptions came from gambling, bootlegging or prostitution or some, a combination of these. Dr. Keyes and Jutilla are exceptions. Keys ran the Water Works, and the Mullan Light was run by Jutilla. I got one payment from Keys and one from Jutilla. Keys paid \$40.00 and Jutilla, \$1.50. The council asked me during my term whether the liquor dealers, prostitutes and gamblers would pay. John Wheatley asked me once or twice whether some of the fellows on the main stem were paying.

CROSS EXAMINATION

BY MR. POTTS:

Charles Fond was proprietor of the Bilberg. The conversation with him about the committee of bootleggers was somewhere in 1924 or 1925. I was not a regular policeman at that time. I acted specially at times. I spent most of my time in Mullan in 1924, frequented these places, and it was on such an occasion that I had this talk with Charles Fond, either at Mullan Pool Hall or some other place; I do not remember the places. I remember instances but do not re-

member the places. Fond was running one of them. He and I were alone. I do not know what the occasion of the conversation was. I was an intimate friend of his and frequented his place. We frequently discussed different matters. I do not remember anything about the conversation but the incident, and speaking about the way it came about, that is, in regard to the committee getting in contact with the committee from the Trustees. In fixing the amount of collections I exercised my discretion. Wheatley told me to and I think Harwood and Ristau were there.

CROSS EXAMINATION

BY MR. WERNETTE:

I do not know who else I told about the Fond conversation except I did tell some of the federal officials. Fond's statement was not told by me to anybody until I told it to the federals within the last few days.

CROSS EXAMINATION

BY MR. NUZUM:

Q. I didn't understand what you testified your occupation has been in Mr. Pott's examination—1924 I believe you said you did nothing but assessment work?

A. I said I didn't remember what other work I did aside from the assessment work.

Q. Do you remember that now?

A. I can't recall now where I was employed.

Q. How much money did you earn in 1924?

A. I do not know.

Q. Did you earn any?

A. I must have earned something in order to live.

MR. NUZUM: Some people seem to do that without working.

A. "A number of people that I worked for."

Q. You do not know when you worked for anybody?

A. I don't know just where I worked.

Q. Can you tell a single individual that you worked for in 1924?

A. I do not remember. I would have to do a lot of thinking before I could check that up."

In 1925 I worked for the Carney Copper Company, in 1924 or 1925, but am not certain just what year it was; that was a mining company. I do not remember just what I earned there. In 1926 I worked for the Butte and Coeur d'Alene. I earned \$6.00 a day; do not know how many days, possibly a couple or three months. That is all I did except my own work. I did that for myself. We got partial returns for our labor. I do not know what I earned in 1926. In 1927 up until I went to work as chief I was working for the Carney Copper Company, from the first of the year to the latter part of April. I did contract work. I have not been paid for that yet. I have not any income except from my own efforts. I had men working on property when I was chief, three men, doing assessment work.

I did not pay anything myself as I remember. I own two houses; bought them for \$600.00 while I was chief. I was chief 18 months at \$175.00 a month. I paid some for working the claims after the second year. I let a contract for 100 feet of tunnel at \$15.00 per foot in 1927. I did not pay that out of my own pocket. We levied an assessment. It was an organized company. I did not pay anything on the assessment. I sold \$1000.00 worth of stock in 1925. I did not have a bank account. I would not recall the names of the men I rented the house in Mullan to. I do not know what they were doing in the house. It was not rented for the purposes of prostitution. I do not know whether a house of prostitution was conducted there. I did not collect license for that purpose from the people occupying it; did not rent it to a woman conducting a sporting house; there was not a sporting house there to my knowledge. I do not know whether I would have known it or not. I can't recall any individual I collected from. I collected the rent from a woman; she claimed to be married. I do not know the woman named Margary McDonald. I do not think that was the renter's name. I know her name but cannot think of it. I do not know who the woman named Margery on the list of October 1st, 1928 is. I can place all of the names but three on that list.

Q. Coffee Shop, cash, and cash by W. Now, there is only two names, as I get it, or three names that you cannot state who they were and knew the places they run. Will you say now that Margarie paid you seven dollars and half of the list of October 1, 1928,—did not

pay it while she was occupying a house you owned in Mullan?

A. I will say positively and emphatically that she did not.

Q. How do you know that she did not if you don't know who this individual was?

A. I know that she did not pay me for my house.

Q. I thought you told me you did not know who occupied the house.

A. I told you I did know, but could not remember their names.

I know that they did not make any contributions to me and that I did not have any knowledge of it being a house of prostitution. I don't know whether it was or not. I know there was no Marjarie that occupied my house. I know I never collected any money from anybody that occupied my house that is on that list.

CROSS EXAMINATION

BY MR. WALKER:

I did not pay any income tax in 1924, 1925, 1926, 1927 or 1928.

RE-DIRECT EXAMINATION

BY MR. RAY:

The names of these girls appearing on this list I have been interrogated concerning were girls in the houses

of prostitution. They were in and out. They might not stay over but just a few days or over night may be and go, some a week and some a month.

ANTHONY MCGILL, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Anthony McGill; 39 years of age and a miner by occupation; have been since 1907; in recent years generally as a shift boss and assistant foreman around the mine; have worked in the Coeur d'Alenes and went to Mullan in the later part of 1927. I had been there previously. I first went to the Midnight Mine and worked until about February. I went to the Morning and was contracting on the 3000 foot level; I went back to the Midnight; later left the Midnight, about the middle of July, 1928 because I was sick in the hospital; too much dust. I went around Mullan and knew that there was liquor sold. I drank myself at all these places. I met Fond, the defendant in 1928 and talked to him about tending bar in the Bilberg. I was to go to work for him in the Mullan Inn, with the had been paid in I was to have a half interest. I started in at the Mullan Inn on the 23rd of August; ran an open bar room; sold beer, whiskey and wine openly over the bar. I got my whiskey from the defendant, Fond, at the Bilberg up to about Christmas time. I went over and bought a gallon jug at a time. After

that he had it delivered from Wallace. My beer I got myself from a Finn woman and then from Blackie Coughlin, defendant here, and prior to that time I got it from Fond. We got the beer in 12 case lots of 24 pint bottles. Somebody working for the defendant Coughlin delivered the beer. I never had any trouble with any officers at the Mullan Inn. I paid my license every month to Needham while he was chief of police, then to Mr. Welch, Army Welch, the defendant. He was chief of police after Needham. Welch drank whiskey at my place. At one time he brought me some whiskey from the Bilberg. I know Morphy, the defendant. He was in and around my place. I never saw him take a drink. I know Charles Bloom, deputy sheriff. He would make an occasional visit. Sometimes I would not see him for two weeks at a time, then he would drop in. Any time he came in I asked him to take a drink and he did. Sometimes they would drink booze, sometimes they would take whiskey and sometimes they would take a cigar. I was never interfered with by Mr. Bloom. I was assisted by him once. There was a raid on one evening up there, it was along about Christmas time in 1928.

Q. Do you know whom the raid was being staged by?

A. Why, I know that Mr. Webb and Mr. Johnson were there and I heard that Mr. Foster was with them; Webb and Johnson are Federal Prohibition Agents. I did not see Mr. Foster.

Q. What happened as far as Mr. Bloom is concerned?

A. Mr. Bloom came in the place and told me that they were raiding and I was wondering what to do. There was quite a few drunks around, and he says, "You got your car here, get the stuff in the car and get it out of here, get it out of the way", and we started to taking it out and then there was another defendant here in the case, he says, "get out of the way", he says, "I will take it."

Q. Who is that?

A. Jack Malloy." I was not raided on that occasion. They left. I later had trouble with Mr. Fond over the place. I later had a conversation with Mr. Bloom, the defendant, in front of Harwood's about my trouble with Fond.

Q. State that conversation?

A. Oh, well, we just met and I told him that I had went down and paid the taxes on the fixtures and that I was going to try to make a go of it, I thought maybe I could, and I was going to make some arrangements with Mrs. Rantella, the woman that owned the fixtures.

Q. What did Mr. Bloom have to say?

A. Well, he said. "You might as well go ahead and maybe you can make a go of it, all right." So he told me there is no use trying to buck Charley because he did not have anything. Charley is Charley Fond.

I have seen Mr. Bloom in the Bilberg on numerous occasions. He was observing what was going on and

drinks were served while he was there.

Q. Now, then, calling your attention to election day, 1928.

A. Yes, sir.

Q. What, if anything did you do concerning the election on that day, Mr. McGill?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

MR. RAY: I think I shall bring it out directly as touching the officials of Shoshone County, your Honor.

MR. NUZUM: I think that is immaterial.

MR. RAY: By that I mean the Sheriff's Office.

THE COURT: The question is pretty broad, what he did on election day.

MR. RAY: Very well, your Honor.

Q. Did you supply an automobile—strike that. Did you have any conversation with Mr. Bloom on that day relative to your work?

A. Yes sir.

Q. And where was that?

A. Why, a few days after—in Mullan Inn.

Q. And when was this talk with Mr. Bloom?

A. It was a few days after election.

THE COURT: In 1928?

A. Yes sir.

MR. RAY: Very well, now then, go ahead and state.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

A. Why, he just says that we had things our way again, we had Weniger in, and things were going along pretty good, and he thanked me for what I had done.

MR. RAY: What had you done?

MR. NUZUM: I object as immaterial what he had done in election.

THE COURT: What he had done in connection with Bloom he may state.

A. I just donated my car to the boys for service to help them out.

MR. NUZUM: Now if your Honor please, I move to strike that. Bloom was not a candidate for office.

THE COURT: Denied.

MR. NUZUM: Exception.

MR. RAY: Q. Was Mr. Bloom present on election day at Mullan?

A. Yes sir.

Q. Did he have anything to do with the use of your car?

A. Yes sir.

MR. NUZUM: All of this with reference to election goes in under my objection, if your Honor please. I object to it as incompetent, irrelevant and immaterial. It does not make any difference what anybody does with reference to a state election.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

THE COURT: A conversation had with one of the defendants.

MR. RAY: Q. And did you supply your car?

A. Yes sir.

Q. What, if anything, did you do relative to banners or posters on your car?

MR. NUZUM: Just a minute, I object to that as incompetent, irrelevant and immaterial. That is not a conversation with the defendant.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

A. I carried a banner on the car to vote for Al Smith in the—

MR. RAY: Q. Who furnished that?

MR. NUZUM: I move to strike that, because Al is not a party to this.

MR. RAY: Just a moment, I can connect this up in just a minute with Mr. Weniger.

Mr. NUZUM: As a democrat, I must protect Al.

A. I voted for him myself.

THE COURT: The statement of counsel is that he will connect it. I reserve the ruling. Unless he does, why, the Court also will protect Al.

A. Mr. Bloom tied the banner to my car. I told him we ought to have one there for Weniger and he said, "We have enough cars out for Weniger." And I said, "Al is good enough for me." I told all the voters not to forget Weniger. On or about the evening of November 6th Bloom came to my place of business.

Q. Now then, had Mr. Fond said anything to you prior to that time as to what you were to do with Mr. Bloom?

A. Yes sir.

Q. What did he tell you?

A. Why, he told me one day, he came in and asked me how much money I had in the register and I told him, and he said, "Well when Charley Bloom comes over, Charley Bloom will come over, why give him thirty dollars of it for me."

Q. Did Mr. Bloom come in?

A. Mr. Bloom came in and I handed it to him.

Q. Was there anything said?

A. No, sir, there was nothing said about it, but Charley Fond had told me that we had to put up a little money once in a while to keep them in good spirits.

THE COURT: I want to be clear about this. Whom was it you say told you to turn this thirty dollars over to Bloom?

A. Charley Fond.

MR. RAY: Q. He was your partner in running the Mullan Inn.

A. Yes, sir, he was the boss and he carried the keys to the register and all that stuff at the time.

Q. Now, during the campaign of 1928 did Mr. Weniger campaign any in Mullan?

A. Yes sir.

Q. I mean the defendant in this case, Weniger.

A. Yes sir.

Q. Did he come to your place of business?

A. Yes sir, I seen him in there on one occasion.

Q. What were you doing while he was in there?

A. I was behind the bar the day—the reason I re-

member it so well, there was a man trying to make a deal with me for me to handle his beer, and one of the men standing there says—told me, “There is Weniger.” Well, I had not known much of Mr. Weniger before that. He said, “that fellow down there on the end of bar was Weniger, not right on the end, he was next man to the end of the bar”, so I was serving the boys drinks back and forth and there were several times that that kind of stuff had been pulled off, where some fellow would come in and say that such and such a fellow was a Federal man, that he was going to treat you all right, so I put another man in. When they went out I got another man to tend bar, to make sure of things, and I went over to the Bilberg—

Q. Now, before we get over to the Bilberg, were any drinks served to Mr. Weniger or his companions while he was in there?

A. Why, there was drinks served to his companions but I could not state certain whether I served a drink to Mr. Weniger.

Q. When we use the word “drinks” what do we mean?

A. Whiskey or beer or whatever the boys wanted.

Q. Intoxicating liquors?

A. Yes sir.

Q. Now, the Bilberg, where is that located with respect to this Mullan Inn, Mr. McGill, in Mullan?

A. It was one full block and about three quarters of another.

Q. How long was it after Mr. Weniger left your

place until you went over to the Bilberg?

A. Oh, probably ten or fifteen minutes.

Q. Very well, sir. What did you observe when you went into the Bilberg?

A. Well, I went over to see Charley and talk to him about this beer.

Q. Charley Fond, you mean?

A. Yes sir. That was really what I went over to talk to him about, this beer deal, and at that time Weniger and several of those campaigners were all in there drinking and I observed at that time that he was taking a drink because he was pointed out to me then to be the real Weniger.

Q. Who was serving, who was tending bar?

A. Charley Fond.

I quit operating the Mullan Inn on the first of 1929. I was interviewed by government agents in May, 1929 and by Mr. Rodgers. I gave him an affidavit. I had an interview with Weniger and Bloom concerning conditions in Mullan. This took place in Wallace and I was sitting in the lobby of the Ryan Hotel and Mr. Bloom and Mr. Chapman came in and says, "the sheriff wants to see you over there."

Q. Who is Mr. Chapman?

A. One of his deputies.

A. So I went along with them over to his office and as soon as I went in the office, why, I thought he was going to throw a bomb shell at me or something.

MR. NUZUM: I move to strike that, your Honor.

THE COURT: Yes, sir, that portion of the answer

is stricken; not what you thought, state what occurred, Mr. McGill.

A. Well, he jumped onto me and he says, "What is this stuff going around here that you are making beer and fixing up beer for the Elks? And he made several accusations to try and rile me up, and I told him that they were false, and we got to talking things over, and he says that I was up in that country stooling, that I was helping the government men out, that I was stooling on these joints around town, and that the companies—well, through the conversation he told me that the heads of the companies made him run these places, leave them run wide open, and finally it finished up, he told me to keep out of them joints anyway.

MR. RAY: Q. Now, was there any profanity?

A. Yes, sir, there was.

Q. Or any other intimidation?

A. Yes, sir, there was. He accused me of just getting out of jail in Montana and different things like that, and he accused me of not being married.

Q. How many of his deputies were there at the time you were there?

A. They were just about all there. I could not say, because I don't know them all, but there was four there that I know of.

Q. You were in a room, just yourself and them there?

A. Yes sir, they had me cornered.

Q. They were all deputies of Weniger and Mr. Weniger?

A. Yes sir.

Q. Do you know their names?

A. Why, the ones that I knowed in there was Weniger, Bloom, Chapman and I could not tell you what the other man's name is.

Q. And this was just after you had had this interview with Mr. Rodgers?

A. Yes sir, he says—I had a broken leg, I think, but I was not under a doctor's care,—that I was around stooling and helping the government agents out.

There was an understanding among the bootleggers that we were to sell liquor in Mullan for two bits a shot for a glass of liquor, or, for beer, two bits a glass or for a pint bottle it was two dollars, and then we did a little wholesaling, too. I had no trouble about the prices.

I had no trouble about selling except the price of Tom and Jerries during the holidays. I used mostly moon to make them. I had two cases of soft drinks, ginger ale and lemonade, used as a chaser for whiskey. The license I got from Needham and Welch I took out as a permit to run the joint. I knew Chuck Anderson when he was running the Mullan Inn. He was bartender. I first saw him at the Bilberg, then at the Mullan Inn, then the Rockford Cigar Store, a barroom. I bought drinks from him at the Bilberg. To go in the barroom at the Bilberg you went through a lobby and then into the big barroom; never been changed since the open days. Back of the big barroom there was another barroom and little wine rooms in there

that was used when they had warning that the federal agents were coming. The Anderson I spoke of is a defendant in this case. The drinks were served over the bar just as in Alaska or Butte in the early days. I bought drinks from Anderson at the Rockford the same as at the Bilberg. The Rockford had an old time bar with a rail. Drinks were served over the bar. He was at the Mullan Inn shortly after I went there. It was run just the same as when I took it over. I know Herman Arbliss, the defendant. He was working with me and was at the Bolo. He plead guilty here and served his sentence and went back to the mine and has not touched liquor since. He was a bartender for me for a while. I knew Roy Appleton, defendant; had a bar at the Central Hotel. He had a bar there serving drinks over it. I bought drinks of him. I know Gus Aro but not very well. I knew his brother Leo better. The Hunter's was a hotel upstairs and barroom down stairs. There was no lobby; just go right into the bar and drinks were served over the bar. William Coughlin was manager of the Bolo. The Bolo was gambling in front and a bar in the back. Drinks served. I knew him in the Mullan Inn. He was working for me for a period, and running the Bolo when I was running the Mullan Inn. I knew Joe Florin; knew him years ago in Wallace. He was a policeman there for a while when I was in the Mullan Inn. He had the Dew Drop Inn last fall. I bought drinks there. You went back in and stood around and sat on a chair and had your drink. I know Fond. I have already testified about him. I

know Curley Gardner. He was in the Central; afterwards at the Bilberg. I bought drinks of him at the Bilberg; do not remember about the Central. He was a bartender; associated with Appleton in 1927. I know Frank Hahn, first at the Miners Club about Christmas, 1927. I did buy drinks from him. He was running a barroom, an open bar. I knew Pikkerainen at the Rockford I have told you about that place. I bought drinks from him there. I know Charles Hartley; knew him in connection with a place now called the Smoke House, a barroom with drinks served over the bar. I knew Walter Johnson in the Hunter Hotel. I never bought drinks of him. He was behind the bar and we talked about protection. I saw drinks sold over the bar. On one occasion we were talking about the federal men coming and raiding us and we were not satisfied with the protection. I know Mike Kennedy. He was running a little popcorn stand when I was in the Mullan Inn; sold candy and stuff; had a little table in the back where you could sit down and get a drink if you wanted it. I occasionally bought one. I knew Babe Kelly when I was running the Mullan Inn.

Q. What did she do?

A. She was just hooking in a place next door to where I had this saloon.

Q. Hooking—you mean prostitution?

A. She was one of the girls. She was upstairs over where the Rockford used to be—Marble Club; I drank with her, but I never bought drinks from her. She used to come into the saloon where I was.

I know Jack Malloy. He was working for me

around the Mullan Inn. Then I turned it over to him. He was one of my bartenders. I sold him what stock I had; gave him a receipt for it. I know Mona McDonald. She lives over in the Rex Rooms and used to live in the Coffee Shop. I do not know about the Rex Rooms, but the Coffee Shop was a sporting shop. I never got any liquor from Mona but I did from her girls. I knew James Normile, the defendant in connection with the Miners Club. He was there the biggest part of the summer and fall of 1928. He ran a saloon and sold drinks over the bar. I bought from him. I know the defendant Waino Pikkerainen. He was Frank Hahn's partner in the Rockford and Marble Club. He was handling liquor and I have bought over the bar there from him when I was running the Mullan Inn. I know Joe Speck. He was with Hartley, before I went into the Mullan Inn. That was in the spring of 1928. I did not see him in connection with any place. Before he got into trouble I knew he was in the Mullan Pool Hall. I did not buy anything of of him after he came back. The place was just a bar and drinks were served over the bar. Just the same as in Butte or Alaska. I know Bertha Strom, the defendant. She was in the Fern Apartments.

Q. What kind of a place was that?

A. That was a Hook Shop.

Q. Did you ever get drinks there?

A. I did.

I know Tubby Wilcox; knew him in connection with the Bolo. He was a bartender there and I bought

drinks. Can't tell the occasion but he was there during and before the time I was running the Mullan Inn. Coughlin was the proprietor of the Bolo at that time. I know Aggie West. She was handling beer, I occasionally got beer at her place. I knew Jimmie Ryan. She was supposed to be living in a hook shop. I never bought any liquor there. Occasionally she would come in and buy a bottle of me. I know Anna Tornberg. I know Regina Dalo.

Q. With respect to the gambling in the Village of Mullan while you were there, did Mr. Weniger do anything about it?

A. You played poker at any time you wanted to, and during the holidays, why Blackjack games were always open.

I know a man by the name of LaGore. He runs a poker game. You could get in for \$500.00 if you had it, or \$1,000 if you wanted to. They had a house man there; had a pan game and a poker game, and the money would begin to flash around; you did not need to be identified; it did not matter. You could play any time you wanted to start a game; just get a bunch and start the game up—just get some boosters to start her going. Blackjack games running during the holidays for money. I have played at Blackie Coughlin's. Black Dan was floor manager with different men behind the dummy. Gambling was in front of the barroom. I knew a woman by the name of Margery when I was in the Mullan Inn. She was what I would call in plain grammer, just a chippie. She would go around and drink with the

fellows and maybe stay in some booze place for a while and meet with somebody else and stay with them for a while—just a kind of a booster for some of these beer joints. She was in Big Mary's for a while, then stayed with another party called Alga, and they had some place out there that they called The Ranch. The conditions in Mullan with reference to drunkenness on the streets when I was running the Mullan Inn was there was a good many drunks; that wasn't nothing new on the streets there, but they pick them when they get too bad, and lock them up for a while until they sober up. While I was running the Mullan Inn there was only one time the places were molested by the sheriff or police officers of Mullan. It was over Frank Hahn's refusing to pay a license. I do not remember exactly what it was. I was never molested. I left along the latter part of December, 1928.

CROSS EXAMINATION

BY MR. NUZUM:

Q. You were acquainted with every prostitute in Mullan?

A. Practically.

Q. And you associated with every prostitute in Mullan?

A. In a business way I did.

Q. You also went to their houses and bought drinks?

A. Yes.

Q. Was that the business for which you went to their houses?

A. Not altogether.

Q. It was for intercourse, wasn't it?

A. Sir?

Q. It was for intercourse, wasn't it?

A. It was not.

Q. What did you go there for?

A. Just to be a good fellow, and buy drinks.

Q. You associated with every gambler in Mullan?

A. I did.

Q. You associated with every bootlegger in Mullan?

A. I did.

Q. Over a period of how long?

A. About a year, I guess.

Q. Was there any decent woman in Mullan that you knew?

A. Yes.

Q. Did she know your character?

A. Sure.

Q. Was there any decent woman that you dare speak to and let know that you were nothing but an associate with gamblers, pimps, whores and bootlegger—did you let any decent woman know that?

A. Certainly, they knew I wasn't pulling anything wrong outside,—

Q. At the time—

MR. LANGROISE: Let him finish.

A. (Continuing) There was no bones made about my selling liquor. I didn't like the liquor law myself so far as the purpose is concerned. I don't like the graft in it.

Q. You thought there was nothing wrong in any way in associating with whores, pimps, gamblers, and bootleggers and men of that sort?

A. No sir, I was bootlegging myself.

Q. How long had you been in the bootlegging business?

A. Just from the 23rd of August until around New Year's.

Q. That was the only time that you ever engaged in it?

A. The only time.

Q. Prior to that time you had been an honest, hard-working miner?

A. Yes.

Q. You, as other men, earned your bread by the sweat of your brow at that time?

A. I do that right today.

Q. How long did it take you to acclimate yourself to association with these people you have described?

A. I have been around the world since I was a young boy, and I know.

Q. Did you find yourself or not, right at home with these people?

A. Certainly.

Q. Right at home?

A. When I got acquainted.

I sold liquor over the bar the same as in Butte and Alaska in the old days from the 23rd of August until December. There were screens on the windows but you could look over. Doors were open in the summertime.

Anybody could walk in and see what was going on. When prohibition agents came we would have warning.

Q. How would you know that before they got to town?

A. The Sheriff's force and police let us know.

Q. What Sheriff or Deputy?

A. Bloom on one occasion.

Q. Any other occasion?

A. Bloom notified a few times that it was dangerous, and Mr. Welch communicated with me that there was danger, and that the Federal men were in town, and to get the stuff out and lock up.

Q. Bloom and Welch were the only ones—did Needham?

A. No sir.

I got warning several times before the federal men came. I happened to be lucky enough to get a warning. In June, 1928 I did not get the stuff out of the way but they did not get me; did not get mine; never closed up and any one could have seen it. The first time I told this story was on the witness stand last term. The first man I told was Hickman, when they had me on the stand last year. They had a bunch of affidavits saying we were trying to frame Fond and Fond got on the Witness stand and admitted I told the truth. I sued Fond for wages. I told Fond I would do six months in the can and I would see that he did ten or more. I first told my story as I have told it on the witness stand to Webb and Johnson when I was working for the Hecla. They told me that Fond told them I was running a joint.

They did not tell me unless I told everything they would prosecute me. I told him I sold booze over the bar. I have never been arrested; am not under bond; never was prosecuted. I went before the Grand Jury and testified in the entire case. I did not know I would not be prosecuted. I told Webb and Johnson I had been running an open saloon for six months. They said I would be liable to get hooked into it myself. I says, "All right, I am guilty. I was running a saloon and selling liquor." I have not been served with a complaint so far. They made no complaint and I have not been taken in so far. I made the affidavit later on. I testified against Fond and it resulted in his conviction. I did not buy from anybody. Mrs. Rantella owned the place; Johnson was supposed to be the owner. He was a mill man at the Morning Mine. The place was supposed to be in his name. There was no bill of sale. Fond told me Johnson had to quit the saloon business because of his position in the Morning Mine, and I could buy the saloon for \$300.00. The keys were to be retained by Fond up to the time the \$300.00 was paid; only the keys to the cash register, not the keys to the saloon. He paid Johnson. I sold the stock in the place to Jack Malloy, and whatever interest I had. I gave the bill of sale to Mr. Williams of White & Bender. He was salesman for the White & Bender. He came in to get Malloy and ask him for the bill of sale—asked if he could have it for a few days. I might have gone back behind the bar with Jack's consent and got it. I did not sell any interest to a Finn. He was there, and I had a talk with him and sent him

over to see Silvas and Mrs. Rantella, and he and I were to take the place between ourselves after Fond and I split up. I got the Finn to see Rantella about getting the fixtures at a decent price. The Finn tried it a couple of days; then got drunk and blew up. Fond and myself separated shortly before Christmas. I sold to Jack Malloy after Christmas. The bill of sale was taken and given to Williams three or four days after that. I was around the place. Whenever I was by the Bilberg and wanted a drink I bought it. Might be four times a day. I might be there playing poker five or six hours and take an occasional drink. Cannot tell how many drinks I bought there. I was manager of the Mullan Inn; worked when I felt like it; sometimes five or six hours and would walk around a couple of hours. I might go to Wallace, come back and stay six or seven hours. I went to the Bilberg maybe four times a day and took five or six drinks during the time I was playing poker. I was at the Bilberg practically every day; loafed around several places. I was around the Bolo quite often. It would be hard to say how many drinks I would get at the Bolo; it would be according to how I felt. I might want two or five. Visited the Bolo maybe once in two or three days and maybe the next two or three days I would be there every day.

Q. Can you give us an estimate of how many drinks you averaged at the Bolo?

A. Well, I am quite a little drinking man.

Q. Well, can you tell the jury the capacity of what you term quite a little drinking man?

A. I can carry a good load.

Q. What does a good load consist of—how many drinks?

A. It is according to how you are feeling, and what kind of shape you are in.

Q. In average shape?

A. I can drink 25 or 30 drinks.

I did not average 25 or 30 drinks a day or 15 drinks a day. Some days I would not take any; then I would drink a week. I might meet a bunch and would get on a good load.

Q. What other places did you go to besides the Bolo and the Bilberg?

A. Well, starting at my place, you go next door to the Coffee Shop, I guess you call it the Coffee Shop, and you can get a drink, and then cross the street to the Coffee House, and then on down to the street to the Hunter hotel, and then cross the street and go on down one block to the Miners' Club. You come back the same side of the street, past the Cumberland hotel, and the Victor hotel, and then you come to the Smoke House, and you can get all you want there, and after that the Coffee Shop, and you can get all you wanted there, up until the time they closed up. The Central, you walk down to the Central—that was padlocked during my time, then you cross over to Headhund's and get a drink there. Then you can go to the Rockford and get a drink there, and then you come up around to LaGore's, the Dew Drop Inn, and the next place would be the Bolo, and the next place would be the Bilberg.

Q. Mona McDonald's place?

A. That was—I never got liquor there. Mona was in a house of prostitution—it was the Coffee House. She was also living at the Rex rooms. I do not know anything more about it.

Q. Would you make the rounds of the places of every one of those places every two, three or four days?

A. It would be just according to how I was feeling, how far I would be able to go.

I did not know the defendant Weniger until he came into my saloon prior to election. I never had any conversation with him but once and that is when he called me to his office about the Elks. He told me that the clerk at the Ryan had stated I had told him I was bottling beer for the Elks for the state convention and we were doing that. I did not tell him so. He asked me if I was and I told him I had been where there was some beer. I did not tell him I was bottling beer for the Elks and did not deny it. He brought up the question to find out whether or not I was stooling for the Government. He asked me and I told him I was not. He did not ask me what I was doing around there; he told me that. He claimed I was stooling for the Government. I saw him drinking in Mullan during election campaign. He did not tell me he did not want any more talk about bottling beer for the Elks. He did not tell me unless I got to doing something he would vag me. He wanted to know about the Fond deal. We talked things over and he told me I had better cut out drinking around there. I had been drinking and was drunk when I was up there. I

was under the influence of liquor always. I would take a drink occasionally. I never had any business with Weniger. I never had any talks with him. I did not know who he was when he was in my place in Mullan until I went with somebody and found out that he was Weniger. I had never had any conversation with Weniger at that time. All that was the matter with Weniger was that he was sore because the government men were in town and he figured I was helping them. I have told practically everything I can remember that happened in Weniger's office. Weniger and Bloom and another deputy were there. I do not know his name. There was more than four there. They came in and went out. Some of them heard the conversation. I first saw Weniger shortly before election day .

Q. Who was in the place with him?

A. Why, there was one fellow up there commonly known as drunken Ganlack; was there with him.

Q. Who is Ganlack?

A. An attorney up there.

Q. Ganlack was an attorney who was running for prosecuting attorney on either the Republican or Democratic ticket, wasn't he?

A. I don't know what he was running on.

He was in the immediate vicinity of Weniger when they were in the Mullan Inn. Mike Mahoney and Disbrow were in there. Weniger with some friends was in the front of the bar. I could not tell whether Weniger was drinking. Ganlack was one of the men who was with Weniger and I cannot tell who the other men are.

They came in about 7 or 8 in a bunch. Weniger broke away from them and one man did all the buying. Weniger was at the far end of the bar. One man was on each side of him. Ganlack was one of them. I do not know who the other man was. Disbrow bought the drinks and then Weniger went out. They all went out about the same time over to the Bilberg. Ganlack was with Weniger in the Bilberg. There was a number hanging around all trying to get a drink on the election. Charley Fond was tending bar at the Bilberg. I do not know who was tending bar at my place. I observed Weniger taking a drink in the Bilberg. It was a shot of moon. We all drank. I cannot give the exact date. That was the only time I ever saw him in a saloon anywhere. I was well acquainted with Bloom. Had known Bloom since I was there and he was a shift boss at the Hunter Mine in 1916. I knew him fairly well. I had drinks with him when we got the booze from over the hill when Montana was wet. He was an officer then. I left and went to Alaska; came back in 1922 and did not go around Mullan. Did not see anything of Bloom. I had no association with him except to speak to him on the street. I cannot state the date when he first came into my place; it was shortly after I first started up. I do not remember whether anybody was with him. I do not know of anybody else who was there when he first came in. He would come along and get a drink once in a while. I was tending bar. Bloom never bought a drink. I cannot tell anybody else who was there. He never took more than one drink. At the time he spoke about the federals he said,

“They are raiding.” He took a drink at that time; I bought the drink myself. Jack Malloy was there. George Bare was there; that is, I am pretty sure he was there. George Spinney may have been there. Malloy was where he could see Bloom take a drink but had a pretty good load on. Bloom came in and the first thing he told me was that the federals were in there, in town and Malloy was where he could hear that and was sober enough to hear it, and Bloom says, “We will put it in your car and get it out.” We started to put some of it in the car and finally I says, “To Hell with it”, and I was going to quit the business and get out of there and anybody that wanted it could have it. All I sold there was what little stock I had, what I had bought.

Q. Any booze?

A. Oh, I might have took a bottle with me, yes sir.

Q. And you left with Bloom?

A. I went out of the place with Bloom, yes, if I remember right. I am pretty sure I went out of the place with Charley Bloom that night and went over to the Hunter to find out about it.

Jack Malloy was there all of the time this was taking place and Jack said, “Go on, I am an old man”, or something, “I don’t care whether I am in jail or not and I will take the fall.” And Bloom says, “Well, there is no use arguing with him, let him go.” I left the old man there to take the fall.

About the \$30.00, one afternoon Charley Fond came in and told me that he was a little short of money and for me to give Charley Bloom thirty dollars.

Q. What did he say it was for?

A. Oh, he says, "We got to treat them fellows right, you know."

Q. Now, was anybody but Fond and you there?

A. Nobody. But there was men in the saloon. But he came in behind to talk to me about it.

Q. And he said, "Give Charley Bloom thirty dollars, we have got to treat these men right." ~

A. Yes sir.

Q. And you gave it to Bloom?

A. He came in and got the thirty dollars.

Q. You gave it to him?

A. I did.

Q. Did he ask you for it?

A. No. He came in and I walked over and handed it to him.

Q. What sort of money was it?

A. It was in bills.

Q. What denominations?

A. I could not tell you.

Q. Anybody see you do it?

A. No, not that I can remember of.

Q. Did you take a receipt from him?

A. I have heard that there was a certain party seen me do it, but I don't know whether they did or not.

Q. Did you take a receipt from him?

A. No sir.

Q. Did he give you an acknowledgement of it?

A. No sir. I put it on the files, on the cash register and charged it to Charley Fond.

Q. That is, did you put it on "Thirty dollars given to Bloom."

A. No, I just put down, \$30.00 charged to Fond."

Q. Thirty dollars to Fond?

A. Thirty dollars to Fond.

It was charged to Charley Fond. That is the way it appeared on the cash register.

Q. What do you mean about putting it on the cash register?

A. Why, I ring up my cash register and any money paid out I made a slip of it and put it in the cash register. When Charley came to check up he would open up the cash register and check up the amount of sales and tally them up with the receipts from the cash receipts.

Q. And there was such a slip in the cash register on the day that you gave Bloom this money?

A. There was.

Q. And it was there when Charley Fond came and went into the cash register?

A. It was.

Q. And that is the only memorandum you made of it?

A. That is the only memorandum I made of anything. I was warned to keep Charley Fond's name off the receipts.

That is the last time I saw Bloom in my place. That night of the raid was the last time I seen him in the place.

Going to the election, Bloom did not ask for the use of my car. He said to boost for Weniger. He told me

he had hired four cars up there. I told him I knew a lot of men around the Midnight and Morning and I wanted to help them and I asked him for a banner.

Q. And you asked for a banner, didn't you?

A. I did.

Q. And he gave you a banner which said, "Vote for Al."

A. Yes sir.

Q. And you did not have a Weniger banner on your car?

A. No.

Q. Now, the only thing you say he said to you was, "Don't forget Weniger."

A. Why, sure, that is what I said to them.

Q. And Charley Bloom did not ask you to get a vote out for anybody, did he?

A. He did not ask me exactly. He told me to get out and help, help the cause along.

Q. And gave you the head of the democratic party's ticket, didn't he?

A. Sir?

Q. He gave you the ticket with Al Smith's name on it?

A. Sure, he did.

Q. And made no suggestions about doing anything for Weniger as an individual, did he?

A. Why, he told me—he did, he says, "Don't forget Weniger; keep Weniger in mind while you are going around."

I got no pay for it and it was my offering that caused

the car to be used by the Democratic Party.

About the tax receipts for taxes on the fixtures, Bloom was not there the day I paid the taxes. I went down to Wallace. I did not pay them to Bloom. The receipt showed it was paid by A. H. McGill. Bloom brought the notice in for me to go down and pay the taxes. He just came in and handed me the tax bill and he went out. I do not remember the day. It was after I had made the deal with Fond and got the cash register key after I had gotten rid of Fond. I took the keys a few days before I paid the taxes.

CROSS EXAMINATION

BY MR. WERNETTE:

I do not know what the relations are between Hahn and Pikkerainen. I do not know Joe Speck very well. Met him when he was working for Hartley and after that I did not know him at all until he came back. I played cards with him and gambled with him after he got back. I personally bought beer from Aggie West twice; just got a bottle. Her husband was there.

CROSS EXAMINATION

of Witness McGill, resumed:

BY MR. NUZUM:

Fond never really turned the place over to me. He gave me the keys to the cash register shortly before Christmas. I do not know date Bloom notified me of

the federal raid. It was different times when they would be coming up there and we would get warnings right along. That conversation was about Christmas. He occasionally took a drink in my place. I cannot remember dates. I testified before the Grand Jury.

Q. Never did testify to the date?

A. No, not exactly. If a man comes in and takes a drink occasionally he ain't going to put a mark on the calendar about it.

Q. Didn't you testify before the grand jury?

A. I certainly did.

Q. Well, didn't you testify that on the 25th of November, 1928, no, on the 20th of October, 1928, Bloom took a drink in your place?

A. I don't exactly remember unless it was some special occasion.

Q. Didn't you testify to that, didn't you fix the date before the grand jury with reference to that?

A. Now, I could not say for sure whether I did or not.

Q. Didn't you testify before the grand jury that it was on the 25th day of November?

A. Yes sir, he took a drink that day because it was—

Q. It was what?

A. That was election day.

Q. The 25th of November was election day?

A. No, it was not either. The 25th of November, I forget exactly what occasion that was but I never did testify to no date.

Q. Didn't you testify before the grand jury that

on the 25th of November Charles Bloom warned you that the Federal Agents were coming to raid the Mul-lan Inn?

A. Oh, now, I know what it is. It was the date—

Q. I just asked you that question.

A. It was the date—

Q. Listen to the question, Mr. Witness. Didn't you so testify before the Grand Jury?

A. I probably did if it is the date that raid was made.

Q. Was there a raid made on your place?

A. No sir.

Q. What date was it that you gave him the thirty dollars?

A. I could not state. I believe I could look that up, though.

Q. Wasn't it the same day that the raid was made?

A. No sir.

Q. It was another day that the raid was made?

A. Yes sir.

Q. And another day different from the time you testified that he took the drinks?

A. He took the drinks occasionally.

Q. Didn't you testify before the grand jury that on or about the 25th of November, 1928, Charles Bloom received thirty dollars from you?

A. About that time, yes sir.

Q. Also, that he took a drink on that day. How did you fix that date?

A. He did not take a drink. He did come in and get that thirty dollars.

Q. All right. Didn't you testify before the Grand Jury that it was on or about the 25th that you gave him the thirty dollars?

A. It was.

Q. And on or about the 25th that he warned you of the raid?

A. Well, I was warned several times.

Q. Now, I am talking about this—you only testified to one warning on direct examination yesterday, by Bloom. That is the one I am speaking about.

MR. RAY: That is a conclusion, the record will speak for itself, if your Honor please.

THE COURT: Go ahead.

MR. NUZUM: Q. It is the one that you testified about yesterday.

A. Yes sir.

Q. Now, was that on the 25th of November?

A. It was about that time, yes sir.

Q. Then you testified just a moment ago that the time that he gave you the warning was not the time you gave him the thirty dollars, didn't you?

A. Why, no, the time I gave him the thirty dollars I never testified that at that particular instance that he gave me any warning.

Q. All right. Then you did testify before the Grand Jury that it was on the 25th as to each one of them, didn't you?

MR. LANGROISE: Just a moment, that is not correct. We object to it for the reason it is unfair to the witness.

MR. NUZUM: All right.

Q. Did you tell the Grand Jury it was on or about the 25th that he took the thirty dollars?

A. Yes sir, it was.

Q. Is that the way you testified or did you tell them it was the 25th?

A. No, I never testified in my life to an exact date or a certain hour unless I was actually sure of it.

Q. Well, did you even fix the month before the Grand Jury that he took the thirty dollars?

A. I did.

Q. What month?

A. It was November.

Q. And what time in November?

A. Well, I could not exactly state what time in November.

Q. What time did you tell the Grand Jury?

A. WELL, it was—

Q. What time did you tell the Grand Jury?

A. Well, that was along about the time that the taxes were due.

Q. What time did you tell the Grand Jury?

A. I did not give the Grand Jury any exact time.

Q. You did not even fix it approximately, did you?

A. Yes sir, I fixed it the latter part of November.

Q. Did not mention the word *twenty-fifth*?

A. Not that I know of. Somebody might have mentioned the twenty-fifth. If they did, why, my answer to it was that it probably was about that time.

Q. And the twenty-fifth also with reference to the

time that you say Bloom warned you?

A. I am pretty near certain that the night that you are talking about that the Federals were in town was the night after Christmas.

Q. Then it would not be the 25th?

A. That would be the 26th of December if you want the exact date.

Q. I thought you left the place just before Christmas?

A. I left the place just after Christmas.

Q. Just after Christmas. Then it was the 26th of December instead of on or about the twenty-fifth of November that Bloom warned you that the Federals were making a raid?

A. According to what I can figure back, Mr. Johnson and Webb and as I was told fixed it that they was raiding the Hunter Hotel and he came in the place.

Q. Then you did not mention anything to the Grand Jury about Bloom warning you on the twenty-fifth of November or on or about the twenty-fifth of November that the Federals were coming to raid the Mullan Inn?

A. Yes sir, he warned me previous to that that they were liable to be in at any time. They never made any special threats of where they were coming to; they would just tell us that they were coming in, that they were on their way in the country.

Q. The testimony you gave on direct examination was that Bloom warned you and you started to get the stuff out, not that they were coming to raid, but they were raiding.

A. They were raiding, yes sir.

Q. And this is the time you spoke of in your direct examination?

A. Yes sir.

Q. Now, was that on or about the twenty-fifth of November?

A. Well, if that is the date that the raid was made on the Hunter, it is, but if it was not that date it was the day that the raid was made.

Q. I thought you told me now that that was the day after Christmas?

A. Why, I did not tell you that. I says as far as I can think back, why, some of the boys said it was after Christmas, the day after Christmas.

Q. Who of the boys said?

A. Some of the Federal men.

Q. Have you been talking to them about this since you were on the stand?

A. I have not.

Q. When did you get that information from them?

A. I got that about a week ago.

Q. And did they tell you that that is the time that you were to testify that this man Bloom notified you?

A. They told me nothing. I was just asking them to find out what day it was.

Q. Why, why were you questioning them?

A. Well, I just wanted to find out about it.

Q. What for?

A. Well, it might be material to me so that I could remember.

Q. So that you could testify?

A. So that I could remember close around the date.

Q. So you could testify?

A. Well, no, not exactly.

Q. Did not have your testimony in view?

A. There is some other things in connection with that.

Q. I say, you did not have your testimony in view, did you?

A. What?

Q. When you were talking to these Federals?

A. Why, certainly I have had my testimony—

Q. Yes sir.

A. A man wants to be pretty close to right about it. I did not say yesterday that the incident of getting the booze out was in November. If that is the night of that particular instance, if it had been November, it is correct. He did it and that is all there was to it. Whether it was in January or July, he did it there. The Federals told me that that raid, as close as they remembered it, was the day after Christmas.

I know a man by the name of Martin Patterson. He was night clerk in the Lion Hotel.

“There was a bunch of us fellows together and they asked me to help them bottle up some beer, and Patterson was one of the boys that got some of the beer. He did not exactly ask me. It was the fellow that owned the outfit that asked me.”

Q. I will ask you if in a conversation with Martin Patterson in the Ryan Hotel in the middle of June,

1929, you and he alone being present, if you did not state to Martin Patterson that you were bottling beer for Jimmie Bottenelli for the Elks' Convention or in words in substance to that effect?

A. I did not. I don't know Jimmie Bottenelli.

Q. I will ask you whether you stated that at that time?

A. I did not.

I was married when I went to Mullan. I was separated from my wife. I separated from my wife shortly before Christmas. I never was entirely unfriendly to Mr. Weniger. I really liked him.

Q. And you have stated to numerous people that you did not care what became of the other people but you wanted to cinch Weniger and Bloom, haven't you?

MR. RAY: Just a moment, I object to the question.

THE COURT: The objection is sustained.

MR. NUZUM: Exception. That is all.

MR. RAY: No objection if he fixes the time and place of the impeachment.

THE COURT: None at all if counsel will give the names of the parties and the times and places and give the witness an opportunity, he may ask the question, but you cannot ask it generally.

CROSS EXAMINATION

BY MR. POTTS:

I first went to Mullan in 1912; was there occasionally until 1916 or 1917. The town was wide open. Just as

wide open as Alaska and I was in Alaska in 1910. I was in Butte in 1908; been in Butte since but not since 1914. I did not highly exaggerate the conditions at Mullan. The only difference is you have to pay a little more for your drinks and you do not get good stuff like you used to, and I did not exaggerate as to the facility for getting in and out of places and buying drinks. The only time it would be tightened up a little bit would be when the Federal officers were around. Anybody could come in and get a drink. Any stranger could walk along the street and observe a place where liquor was being sold and people drinking in there and they could smell it on the sidewalks. Any stranger could walk right into the place and buy intoxicating liquor. I never turned a man down. We sold to anybody that came in. I only remember one time while I was in the saloon that I objected to selling him, to a stranger. Going up and down the main street of the town a person could look into some of these places and see liquor being dispensed. You could at the Mullan Inn that I was running in the summer and fall of 1928. The curtain was just about even with the top of a man's head and you could raise up and look over, and lots of times we failed to close the curtains. Of course you would have to make an effort to look in. You could stand right across the street from the Bilberg and see them lined up and drinking. I have not described all of the places where you could go along the street and see them drinking. When I ran the place I served without question or inquiry and openly. I became familiar with these places and frequented them often when I

first went to Mullan. I did not make the rounds every day but every few days. That was customary among the crowd. The Bolo has a card room in front and a bar-room space in the back. You would walk through the card tables down three little steps and to a big back room through a passage way. The back room is not in view from the street. The chief of police Welch was a regular patron at my place; did not buy; I gave him the drinks. He got a drink nearly every evening, whiskey float of moonshine. Jack Malloy and George Bare saw him drink at times. Charles Meyersic and George Spiney, Ed. Olson were there when Welch drank. When I asked him to bring a jug of whiskey from the Bilberg there was no one else around or I would have sent somebody after it. He brought it and gave it to me. It was a gallon jug.

Q. Who was present when he left your place to go and get the jug?

A. I could not exactly state who was present.

Q. Was any one there?

A. Yes, there was a bunch in there that were drinking and I was running short of whiskey and got it.

Q. Who was there?

A. I could not state exactly who was there.

Q. Name a single person that was there.

A. Why, it would be pretty hard to do, I could not state exactly who they were.

Q. How long was he gone after he left your place before he returned with the jug?

A. Oh, about ten or fifteen minutes.

My license was delivered by the chief of police every month Chief Needham first and then Chief Welch. It was for a soft drink place. I did not apply for anything. That was all fixed. I drank as much as 25 drinks of intoxicating liquor in a day at times. I meant moonshine whiskey. That might have been only 5 or 6 pints during the four or five months that I drank it. If it came that way it was not infrequent for me to drink six or eight drinks of moonshine at a time with a bunch of fellows, but the drinks were small. When I took a drink I took a substantial drink, but when it came to mixing with the business where I had to keep on my feet and mix with the gang, I would take a small one. When I would go around to these other places drinking liquor there I would not always take a big one. The bottle is out right up on the bar to you and you help yourself. You don't have to put her up to the hog line. I got full lots of times, but I was never off my feet.

Q. And you could drink twenty-five drinks of moonshine any day without getting drunk?

A. All during the day, yes sir, I can do it today.

I was frequently under the influence of liquor during the time I was running this place. I did not pay much attention to the running of the place after I found out what kind of mess I was into. I never had no regular hours. I was at the joint the biggest part of my time. When I was behind the bar working I was sober and when I would feel myself start to slip, I would get out. I have been in the mines since going out of this place, over Blacktail Mountain. I have been there practi-

cally ever since the first of July, from the 19th of January until the first of July. I worked steadily up in the Hecla Mine and the first of July I went to the Catherine Mine. Then I was working at a mine in Clarksfork. I have been right here the last few weeks.

CROSS EXAMINATION

BY MR. NUZUM:

The man Disbrow I spoke of is now in jail; in jail here, brought here from Sandpoint, and I was up to see him within a few days with two Federal officers. I know the Disbrow you mean and he is the one that was with Weniger when drinks were served and Weniger either took a drink or his friends took a drink. I thought I was a partner of Fond's from July until December. I thought I was but I wasn't. I discovered late in November that I wasn't. I sued him for wages for two months, November and December. I swore to the complaint. I turned the bill of sale from myself to Malloy over to Williams of White & Bender in the presence of Malloy. I would not say whether it was in the Mullan Inn or in the Dew Drop Inn.

CROSS EXAMINATION

BY MR. BANDELIN:

I never bought any liquor from Babe Kelly; never bought any liquor from Mona McDonald; never bought any from Jimmie Ryan; never bought any liquor from Gus Aro and I never bought any liquor from Walter Johnson.

RE DIRECT

BY MR. RAY:

Johnson and Aro were tending bar in the Hunter. I never drank in Babe Kelly's. I drank with Mona in the Coffee Shop. Myrtle Lavere, the landlady, served the drinks. I occasionally sold a bottle to Jimmie Ryan.

Q. Mr. Nuzum asked you if Mr. Disbrow was in your place of business with Weniger, at the time Weniger was in there, was he or was he not?

A. Disbrow, yes, he was in there. They all piled in there about the same time, and there was one man that stood right at the corner, like here (indicating) as I told Potts a little while ago, in front of the door, and right by him was Mr. Disbrow, and then right next to him was another fellow by the name of Mike Mahoney, and then several men down along the bar, scattered a little bit, and right at the end of the bar was Weniger—three men right together talking, and Weniger was right in the middle of the three.

Q. Disbrow was at one end of the bar and Weniger at the other?

A. Yes.

Q. You are in Coeur d'Alene under subpoena of the court?

A. Yes.

Plaintiff's Exhibit No. 3 shown for identification to witness, Mr. McGill.

Witness McGill: That is one of the licenses that were issued each month by the Chief of Police—paid \$25.00 for it.

MR. RAY: I offer in evidence Plaintiff's Exhibit No. 3.

Exhibit No. 3 admitted.

MR. RAY: Q. Mr. Potts interrogated whether or not you had any objections as to whom you sold liquor. Why?

A. Well, there was no use trying to make any bones about it. Everything was wide open.

My customers were mostly miners. They would come in there sometimes, coming off shift, and get a drink and go home for supper—maybe two or three drinks.

Q. With respect to the dates in this indictment of these various overt acts concerning which Nuzum interrogated you, I will ask you if you were interrogated as to the exact dates at which any of these transactions occurred, of which you testified in answer to Nuzum's questions?

A. I do not understand the question.

Q. Were you asked, Mr. McGill, the exact dates that Mr. Bloom tipped you off, or you gave him this \$30.00?

A. No sir.

Q. Was that indictment ever brought to your attention—did you ever see a copy of it?

A. No sir.

During the Republican Convention in Kellogg in 1928, in August. I was instructed by Needham and Army Welch to try to keep the boys from getting lit up too much, and if any of them did to keep them off the street because the Governor was coming up on a tour

and would visit the city, look around.

Q. Heretofore have you had occasion to tell your story in substance to Mr. Wernette and Mr. Bandelin, counsel for defendans here?

A. Yes, they are both friends of mine.

Q. That was some time ago or recently?

A. Sir?

Q. Was that some time ago?

A. That was before—even before the Grand Jury.

RE-CROSS EXAMINATION

BY MR. NUZUM:

On my former testimony I did not testify that Weniger stood at the outer end of the bar. Disbrow was not standing with Weniger.

Q. Were any dates asked you when you were in the Grand Jury room at all as to these things you alone knew?

A. Those men asked me dates, yes.

Q. And did you attempt to give dates?

A. I did as close as I could.

Charlie Fond knew about the thirty dollars I gave to Bloom and my wife knew about it. I do not know whether she saw me give him the thirty dollars or not. Anything she knew would be what I told her. There were others knew Bloom took a drink on the 25th of November, but I cannot tell you anybody. There was always a gang around. Jack Malloy, George Bear and Charles Milestick knew about the federal warning.

Milestick is an insurance man at Mullan. I think he was sitting near a card table when this conversation took place. The bar was 20 feet or better long.

RE-CROSS EXAMINATION

MR. POTTS:

In June, 1928 neither Welch nor Morphy gave me information that the federals were raiding, and I got no information that night. I was told during the Republican Convention at Kellogg that the Governor might make a trip to Mullan. Needham and Welch told me and Needham was chief of police at that time and Welch was night man. Needham told me to be careful and keep order and keep drunks off the street that day because the Governor was coming through the city on a visit and he wanted to have things looking right. Needham did not tell me to close the place. He did not tell me not to sell; he told me to be careful.

J. L. MARTIN, witness called on behalf of the Government, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

My name is J. L. Martin; have resided at Mullan since 1911; reside there now; am married. Am Justice of the Peace, City Clerk, Treasurer and Police Magistrate, at Mullan; have been City Clerk since July, 1918 and likewise Treasurer and Police Judge; been

Justice of the Peace since 1920, first by appointment. I am referred to as Judge Martin.

Plaintiff's Exhibit No. 4, for identification:

That is the minute book of the Village of Mullan, containing the minute record of the meetings of the Village Trustees. I am wrong; that is the ordinance book. It is in my possession as Clerk, made up by me from the ordinances passed by the Trustees from time to time.

Page 123 of plaintiffs' exhibit No. 4 for identification and the succeeding pages contain Ordinance No. 105 which regulates the income from licenses. It is the occupational tax ordinance.

MR. RAY: We offer in evidence, pages 123, 124, 125 and 126, of plaintiff's exhibit 4 for identification.

THE COURT: That being all the pages containing that ordinance?

MR. RAY: Yes.

MR. NUZUM: On behalf of the defendant Weniger, I object to it as incompetent, irrelevant and immaterial for any purpose at this stage.

THE COURT: Overruled.

MR. NUZUM: And on behalf of the defendant Bloom I make the general objection that it is incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. RAY: I will ask to have marked pages 123,

124, 125 and 126. The exhibit just introduced reads as follows:

ORDINANCE NUMBER 105.

AN ORDINANCE PROVIDING FOR THE REGULATION AND SUPERVISION OF CERTAIN BUSINESSES IN THE VILLAGE OF MULLAN; PRESCRIBING DUTIES OF THE POLICEMAN OF SAID VILLAGE IN RELATION TO SUCH REGULATION AND SUPERVISION; PROVIDING FOR THE LICENSING OF SUCH BUSINESSES AND PRESCRIBING THE LICENSE FEES TO BE PAID FOR SUCH LICENSES AND PRESCRIBING HOW SUCH LICENSE FEES SHALL BE USED; CREATING A FUND TO BE KNOWN AS THE "POLICE FUND" AND PROVIDING THAT ALL LICENSES COLLECTED UNDER THIS ORDINANCE SHALL BE PAID INTO SAID "POLICE FUND" AND PROVIDING THAT SUCH "POLICE FUND" SHALL BE USED EXCLUSIVELY FOR THE PAYING OF POLICEMEN'S SALARY, AND TOWARD DEFRAYING THE EXPENSES OF THE POLICE DEPARTMENT OF SAID VILLAGE; PROVIDING FOR PENALTIES FOR THE VIOLATION OF THE PROVISION OF

THIS ORDINANCE AND FOR THE COLLECTION OF SAID LICENSE MONEY.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF MULLAN: SECTION 1. Unless it appears from the context of this ordinance otherwise, the word "Person" when used in this ordinance, shall also include "person2; the word "day" shall be construed to mean the period of time from mid-night to mid-night or any part of that period; the word "Month" shall be construed to mean a calendar month and "monthly" shall refer to a calendar month; the word "quarterly" shall mean that period of time included within the time beginning with January first and ending with March thirty-first; beginning with April first and ending with June thirtieth; beginning with July first and ending with September thirtieth, and beginning with October first and ending with December thirty-first, and "quarterly" shall refer to such periods of time. The word "year" shall mean the period of time beginning with January first and ending with December thirty-first and "Yearly", shall refer to that period of time.

SECTION 2. All business professions and callings conducted within the corporate limits of the Village of Mullan, shall be regulated and conducted in accordance with all the laws of congress, the State of Idaho, and the ordinances of the Village of Mullan, and in accordance with the regulations of all departments of said governments, including the health

department of the State of Idaho, of the county of Shoshone, and the Village of Mullan, and it is the duty of each policeman of the said Village to see that all persons, co-partnerships, or corporations prosecuting or carrying on any trade, business, profession or calling within the limits of said Village, comply with all such laws and regulations, and to report and complain to the proper authorities of the violation of any such laws or regulations.

SECTION 3. No person, firm, company or corporation shall be engaged in, prosecute, and carry on any trade, business, profession or calling within the limits of the Village of Mullan, for which a license may be required by this ordinance, until he or they or it shall have obtained such license.

SECTION 4. Every person, co-partnership or corporation required by this ordinance to obtain a license to engage in any trade, business, profession or calling for which a license is required, shall pay to the village clerk the sum required by this ordinance to be paid therefor. Upon receipt of such payment, the Village Clerk shall issue a license to the parties applying therefor upon the compliance of the applicant with the provisions of the ordinance relating to obtaining the licenses for the business, trade, profession or calling for which such license is required.

SECTION 5. In every license to be taken out, under or by virtue of this ordinance, shall be contained and set forth the purpose, trade, business, profession or calling for which such license is granted and

the name and place of abode of the person or persons taking out the same the date of granting and the time for which such license is to run. And said license shall authorize the continuance of the business named therein and the place named therein, for the term of such license, but shall not authorize the carrying on said business in any place unless the place licensed shall be closed, and in such cases the clerk shall be notified of the change and he shall note the same in the register of licenses. But if by a peddler, such license shall state whether authorized to travel on foot, or with one, two or more animals, or by automobile. And any person exercising or carrying on any trade, business, profession or calling, or doing any act for which a license is required, shall, on demand of any city officer at his place of business, produce such license, and unless he shall do so, may be taken and deemed to have no license.

SECTION 6. In every case where more than one of the pursuits, employments, occupations, business or calling for which a license is required, shall be pursued or carried on in the same place by the same person at the same time, license must be taken out for each according to the rate severally prescribed, except, as provided by section 10 of this ordinance.

SECTION 7. When a yearly license is provided for the same is taken out after the first day of the year, said license shall expire on the 31st day of December following, and the license shall be required to pay a full year's license therefor, if taken out in

January; if taken out in February, eleven twelfths of such license; if in March, ten twelfths, and shall be reduced one twelfth for each succeeding month during the year; When a quarterly license is issued and the same is issued after the first day of the quarter but issued in the first month of the quarter, the license fee shall be the same as for a full quarter; if issued in the second month of the quarter, the license fee shall be two-thirds of the license fee for a full quarter, and if issued in the third month of the quarter, it shall be one-third of the full quarterly licenses shall expire at the end of the quarter. Whenever a monthly license is taken out and the same is taken out after the first of the month but before the 10th of the month, the license shall pay a full monthly license; if between the tenth and the twentieth of the month, he shall pay two-thirds of the full monthly license, and if taken out after the twentieth of the month, he shall pay one-third of the full monthly license, and all monthly licenses shall end with the month. Whenever a daily license shall be taken out, the amount paid therefor shall be the amount of a full day's license, although only used for part of a day.

SECTION 8. All Licenses required by this ordinance shall be paid in advance in lawful money of the United States of America.

SECTION 9. The amount to be paid by any person, co-partnership or corporation for a license to carry on conduct any business to be licensed under this provision of this ordinance is prescribed in the

sections of this ordinance immediately following, for the respective businesses, occupations, or professions named in said sections.

SECTION 10. Each person, co-partnership, or corporation conducting a billiard room, Pool hall or bowling Alley, before entering upon such business shall pay to the clerk the sum of \$3.00 per quarter, and for each billiard table, pool table and alley, in such poolroom, billiard hall or alley, an additional sum of \$1.00 per quarter. Provided However, such license shall authorize the licensee therein to sell cigars, cigarets, tobaccos and notions, but not soft drinks.

SECTION 11. Each person, co-partnership or corporation having soft drinks for sale, either in or with another business by itself shall pay to the clerk \$25.00 per month and receive a license to conduct said business from him, besides any other license that he, they or it may have.

PROVIDED HOWEVER. This shall not apply to grocery or other merchandise stores selling soft drinks in the original bottles or packages.

SECTION 12. Each person, co-partnership or corporation conducting a soda or ice-cream stand shall pay to the clerk the sum of \$1.00 per year and receive from him a license to conduct such business, besides any other license he, they or it may have.

SECTION 13. Each person, co-partnership or corporation leasing or conducting a theatre or picture house (not a variety concert theatre) shall pay the

Village Clerk the sum of \$15.00 per quarter.

SECTION 14. Each person, co-partnership or corporation presenting or exhibiting minstrels, legerdemain, carnivals or conducting any fortune telling or other business not herein provided for (when not a theatre where quarterly license is taken out) shall pay to the clerk for each single performance the sum of \$5.00.

SECTION 15. Each person, co-partnership or corporation exhibiting or conducting any circus or menagerie, including side-shows, shall pay to the clerk the sum of \$50.00 per day and shall receive from the clerk a license to conduct such business. **PROVIDED HOWEVER**, no license must be collected for an amateur exhibition or concert for school, charitable or religious purposes.

SECTION 16. Each, person, co-partnership or corporation presenting or conducting a variety or concert theatre, whether admission is charged or not, in a place where no license is charged therefor, shall pay to the clerk the sum of \$15.00 per day.

SECTION 17. Each person, co-partnership or corporation conducting a merry-go-round shall pay the clerk the sum of \$25.00 per day.

SECTION 18. Each person, co-partnership or corporation conducting a shooting gallery or any doll rack or cane rack, shall pay to the clerk the sum of \$5.00 per day or \$25.00 per quarter.

SECTION 19. Each person, co-partnership or corporation operating or running a public garage

shall pay to the clerk the sum of \$16.00 per year.

SECTION 20. Each person, co-partnership or corporation conducting a livery or feed stable shall pay to the clerk the sum of \$6.00 per year.

SECTION 21. Each traveling merchant, hawker or peddler who carries a pack and vends goods, shall pay to the clerk the sum of \$5.00 per day if traveling on foot, but if using a wagon, horse, horses, or automobile, the sum of \$5.00 per day PROVIDED HOWEVER, that nothing in this ordinance shall be construed to apply to peddlers in agricultural or farm products.

SECTION 22. Each person, co-partnership or corporation conducting a gas or electric plant shall pay to the clerk the sum of \$10.00 per quarter.

SECTION 23. Each person, co-partnership or corporation conducting or carrying on any water-works or plumbing store, or both, shall pay to the clerk the sum of \$10.00 per quarter.

SECTION 24. Each person, co-partnership or corporation conducting a telephone business in the limits of said Village shall pay to the clerk the sum of \$5.00 per quarter.

SECTION 25. Each person, co-partnership, or corporation operating a motor-car or bus for hire, or engaged in drayage or transfer business, shall pay to the clerk the sum of \$3.00 per quarter.

SECTION 26. Each keeper of a hotel or lodging house, restaurant or public eating house, or stand, shall pay to the clerk the sum of \$3.00 per quarter.

SECTION 27. Each person, co-partnership or corporation engaged in the laundry business shall pay to the clerk the sum of \$3.00 per quarter.

SECTION 28. Each person, co-partnership or corporation operating a barber shop shall pay to the clerk the sum of \$1.50, per quarter.

SECTION 29. Each person, co-partnership or corporation keeping or conducting a roller or ice skating rink shall pay to the clerk the sum of \$10.00 per month.

SECTION 30. Each person, co-partnership or corporation, who in a fixed place of business, sells any goods, wares or merchandise, drugs or medicines, jewelery or wares of precious metals, whether on commission or otherwise, including all butchers, meat-dealers, in general merchandise, shall pay to the clerk the sum of \$1.50 per quarter.

SECTION 31. Any person, persons or company, co-partnership or corporation who shall transact any business, trade, occupation or profession for which a license is required by this ordinance without procuring such license, shall be deemed guilty of a violation of this ordinance, and upon conviction thereof, shall be fined in a sum not less than \$5.00 nor more than \$100.00.

SECTION 32. Any person conducting any business, trade or occupation, either in whole or in part, as a manager, clerk, servant or employee of any person, association or co-partnership or corporation, for which business, trade, or occupation a license is

required by this ordinance and for the conducting or carrying on of which business, trade, or occupation no license has been obtained by the party for whom said business, trade or occupation is conducted shall be deemed guilty of a violation of this ordinance in conducting the business, trade or occupation without having a village license therefor, and upon conviction therefor, shall be fined in a sum not less than \$5.00 nor more than \$100.00.

SECTION 33. In case of parties conducting or doing a business for which a license is required by this ordinance and such parties not having such license, the act of conducting such business for each day shall be considered a separate offense.

SECTION 34. If any person, persons or company, co-partnership or corporation transact any business, trade, occupation or profession for which a license is required by the ordinances of the village of Mullan without procuring such license, there shall be due from such persons, company, co-partnership or corporation to the village of Mullan, the amount of the license required for the transaction of the business, trade, or profession so engaged in, conducted or carried on; and the village of Mullan, by civil action, may enforce the collection of the same.

SECTION 35. All moneys collected for license under this ordinance shall be paid into a special fund to be known as the "POLICE FUND" and shall be used exclusively for the payment of the salary of Policemen, and for the expenses in connection with the

operation and conducting of the police court department of the Village of Mullan.

SECTION 36. All ordinances and parts of ordinances in conflict with this ordinance are repealed by this ordinance; **PROVIDED HOWEVER**, this ordinance shall not in anywise be retro-active or ex post facto and shall not relieve any person from punishment for the violation of any ordinance heretofore in force in said Village and shall not relieve any person, co-partnership or corporation from any liability that he, they or it may heretofore have incurred on any bond given pursuant to the provisions of ordinance No. 103, of the village of Mullan, passed on the 6th day of September, 1922.

SECTION 37. It is expressly declared that should any section, part or portion of this ordinance be declared unconstitutional or void, for any reason, such unconstitutionality or invalidity shall in nowise affect the remaining portion of this ordinance.

Passed by the Board of Trustees and approved by the Chairman of the Board of Trustees of the Village of Mullan, this 4th day of February, 1924.

ATTEST:

J. L. MARTIN, Clerk.

Signed:

D. F. CLARK, Chairman.

SEAL.

Page 121, plaintiff's Exhibit 4, is Ordinance 103, an ordinance requiring a license to be had from the city

clerk for soft drink purposes and requiring a bond to be put up to protect the license.

MR. RAY: We offer in evidence Page 121 of plaintiff's exhibit No. 4 for identification.

MR. POTTS: When was this ordinance adopted by the Board of Village Trustees of Mullan?

A. The 6th day of September, 1922.

MR. POTTS: And was it superseded and repealed by Ordinance No. 105? Is that the ordinance referred to?

A. That is the ordinance referred to, but I did not notice that in reading that ordinance a minute or two ago that it did repeal that. If it did, it so states in Ordinance No. 105.

MR. POTTS: Q. This is the ordinance No. 103 referred to in section 36 of ordinance No. 105?

A. Yes sir.

MR. NUZUM: On behalf of the defendants Weniger and Bloom and Anna Tornberg, I object to this as incompetent, irrelevant and immaterial, and I rather gather from what Mr. Martin said that this ordinance has now been repealed. It was repealed by ordinance No. 105. And it seems to me it is pretty remote if your Honor please, 1922. The date of the conspiracy is 1924. I think it was before Mr. Weniger even became a sheriff of Shoshone County. He was elected he tells me in 1923. This ordinance was passed long prior to his election and has been repealed, and it would be incompetent and immaterial in any event as against either Mr. Weniger or Mr. Bloom.

THE COURT: What does the government have to say about this ordinance?

MR. RAY: The purpose of it is to make understandable ordinance No. 105, your Honor, which that makes direct reference to, and I think an examination of the ordinance itself shows its immediate relationship to one hundred and five. Ordinance 105 repeals all other ordinances except one hundred and three, the purpose of it being so that the jury may understand the purpose and effect of one hundred and five. Of course, it was in force up until February 4, 1924.

THE COURT: And the objections will be overruled. The ordinance will be admitted in evidence.

MR. GRIFFIN: September 6, 1922. (Reading:)

“Ordinance No. 103. An ordinance providing for the issuance license for pool halls, billiard halls, soft drinks, restaurants, or places where games or billiards, pools, or cards are played or soft drinks are sold; providing for the amount to be paid for such license, how the same shall be issued; prescribing that a bond shall be before any such license shall be issued; fixing the penalty for violation of said ordinance and repealing all ordinances or parts of ordinances in conflict with this ordinance.

“Be it ordained by the chairman and board of trustees of the Village of Mullan:

“Section 1. It shall be unlawful for any person, partnership or corporation to conduct, run, operate, carry on or manage any pool hall, billiard hall, or soft drink parlor, restaurant or place for the game

of billiards, pool or card games are played, or soft drinks are sold, without first having secured from the village clerk in the manner hereinafter prescribed, a license to conduct such business and give bond to the said village as hereinafter specified.

“Section 2. Before any person, partnership or corporation shall be entitled to receive such license, he, they or it, shall make an application in writing to the Board of Trustees of the said village, therefore, giving the number of the house, and the street on which it is located, or otherwise describing such house so that the same may be located with certainty, where such business or businesses are to be carried on or conducted, together with a receipt from the village treasurer for the amount of license as herein fixed, and the name of at least two good sureties, residence of the village of Mullan, and holders and owners of real estate, or some surety company authorized to transact business in Shoshone County, State of Idaho, as bondsman. If the village trustees shall approve and accept of such bondsmen and grant said license, clerk of said Village of Mullan, shall issue to said applicant upon his, they or it, giving the said village a bond with said sureties as surety thereon according to law in the penal sum of five hundred dollars (\$500.00) dollars; conditioned that he, they or it, will keep a quiet and orderly house, and that he, they or it, will not permit gaming for money in said house, or the keeping, making or selling or giving away therein of any intoxicating liquors whatever and that

said applicant will not permit of riotous or disorderly conduct therein; and that such applicant shall at all times comply with all of the laws of the State of Idaho and the ordinances of the Village of Mullan pertaining to intoxicating liquors and such business or businesses. But said clerk shall not issue the said license until the said bond is executed as aforesaid, and such applicant shall not commence business until such license shall have been issued.

“Section 3. The amount of said license for any or all of said businesses shall be the sum of sixteen (\$16.00) dollars per year, and all license shall issue for one year from January 1st to December 31st, inclusive, in the calendar year in which such application is made, provided, however, that when such license is issued after January 31st of any year, the sum to be paid for such license shall be set proportional part of such yearly license as the number of months remaining in said calendar year, including the month in which the license is issued, shall bear to twelve or the entire number of months in a calendar year.

“Section 4. Upon said applicant having been convicted in any court having jurisdiction, or violating any law of Idaho, or any ordinance of the Village of Mullan in relation to intoxicating liquors, or in relation to the carrying on of, or conducting of said business or businesses for which said license is granted, the said license shall at once become null and void and thereafter the person, partnership or corporation to

which the same shall have been issued shall not thereafter conduct any such business or businesses in said village until another license shall have been issued to said person, partnership or corporation and no license shall be so issued for a period of six (6) months after such former license shall become null and void.

“Section 5. Any person violating any of the provisions of this ordinance shall upon conviction thereof be fined in any sum not exceeding one hundred (\$100.00) dollars and costs of prosecution.

“Section 6. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

“Passed by the Board of Trustees and approved by the chairman this sixth day of September, 1922. Joseph L. Martin, Clerk. A. P. McRae, Chairman

MR. RAY: Q. Mr. Martin, handing you plaintiff's exhibit No. 5 for identification, I will ask you to state generally what that is.

A. That is the minute book of the Village of Mullan. Kept by myself as clerk.

Q. And in your possession and custody as such?

MR. POTTS: What was the number of that exhibit?

MR. RAY: No. 5.

MR. POTTS: I thought that ordinance No. 103 was No. 5.

MR. RAY: That is part of 104, Mr. Potts. I

just identified it as exhibit 4 and introduced those sheets of that.

MR. POTTS: How is the exhibit identified?

MR. RAY: No. 5.

THE COURT: Ordinance No. 105, what is it, No. 4?

MR. RAY: Yes sir.

THE COURT: Mark ordinance No. 103 No. 4-A.

MR. RAY: The last question, Mr. Reporter. (Question read.)

A. Yes sir.

Q. Calling your attention to Page 247 of Plaintiff's Exhibit No. 5 for identification, I will ask you to state generally what that page indicates or shows.

A. The first record at Page 247, February 4, 1924, shows the record of the meeting of the trustees of the Village of Mullan, at which time ordinance No. 106—

Q. Was considered or established?

A. Was considered. Reading it I cannot tell whether it was passed at that time. Anyhow, it was considered at that time.

THE COURT: At any rate it is the meeting held on that date and it shows for itself what they did.

MR. RAY: We offer in evidence Page 247 as No. 5-A. of plaintiff's exhibit No. 5.

MR. NUZUM: On behalf of the defendants, Weniger and Bloom, I object to it as incompetent, irrelevant and immaterial and that any action by a village board or a municipality is within the jurisdiction and rights of that board and can be no basis for the

violation of any Federal statute. On behalf of the defendant Anna Tornberg, I object as incompetent, irrelevant and immaterial.

THE COURT: And the objections will be overruled.

MR. RAY: (Reading:) "Proceedings of the village trustees, in regular session, February 4, 1924.

"The village trustees met in regular session in the city office, at 7 p. m. Roll call: present, F. D. Clark, Chairman; C. B. Johnson, Arthur J. Harwood, Elmer Olson; absent, D. R. McCord, J. E. Gyde, Village Counsel; Larry Dooling, Chief of Police, and Joseph L. Martin were also present. And several citizens in attendance to consider the question of street paving following the regular meeting of the trustees. The minutes of the last regular meeting, Jan. 7th and the following adjourned meeting of Jan. 28th were read. Moved and second that the meetings of the several meetings be approved as read. Carried.

ings, Jan. 15th and Jan. 18th, and the called meeting

"Ordinance No. 106, being an ordinance providing for assessing of a license fee upon each line of business conducted within the city limits, for the privilege and right of conducting said business, the funds arising therefrom being for the purpose of conducting the police department and for paying police salaries and the expense of the police court, and kindred purposes, was introduced by Arthur J. Har-

wood. The ordinance was read by the village counsel, Mr. Gyde.

“Whereas there is an emergency existing, making the passage and placing in force of ordinance No. 106, therefore it was moved by Trustee Arthur J. Harwood, and seconded by Elmer Olson, that ordinance No. one (1) of the ordinances of the Village of Mullan, and statute No. 4062 of chapter 166 of the revised statutes of the State of Idaho, being an ordinance and a statute requiring the reading of all ordinances to be passed by city or village governments, to be read at each of three successive regular meetings of the city or village trustees before being placed upon the final passage, be and the same are hereby suspended. The motion was put upon the Aye and Nay vote: D. F. Clark, Aye; Arthur J. Harwood, Aye; C. B. Johnson, Aye; Elmer Olson; D. R. McCord being absent and not voting, the chair declared the motion unanimously carried. After further and due consideration of the ordinance, No. 106, Trustee Arthur J. Harwood moved the adoption of the ordinance. The passage of the ordinance was put upon the Aye and Nay vote; after being second by Elmer Olson; D. F. Clark, Aye; C. B. Johnson, Aye; Elmer Olson, Aye; Arthur J. Harwood, Aye; D. R. McCord being absent and not voting; thereupon the chairman, D. F. Clark, declared the motion unanimously carried. Counsel J. E. Gyde was instructed to have the ordinance published in the Wallace Miner for one issue, being the issue of said 7th, 1924.

The bills were read as O.K'd by the finance committee. (See the list on file); moved and seconded that the bills be allowed and warrants drawn upon the treasurer in payment of the same. Carried. The treasurer's monthly report was read. Moved and second that the report be accepted as read. Carried. Moved and second that we adjourn. Carried.

“Joseph L. Martin, *Clerk*.

D. F. Clark, *Chairman of Board*.”

Page 254 of plaintiff's exhibit 5, at the bottom, shows the proceedings of the village trustees of January 23, 1924, and they continue on page 246 and also a called meeting for January 28, 1924, relating to a consideration of Ordinance 105.

MR. RAY: We offer in evidence the last three lines of Page 245 and the entire page 246 as plaintiff's exhibit No. 5-B.

MR. RAY: I might say that this ordinance was considered at two or more meetings, and that these dates here antedate the one I just read to Your Honor.

MR. NUZUM: I object to this as incompetent, irrelevant and immaterial. The ordinance passed was ordinance No. 106.

MR. RAY: Designated as that.

MR. NUZUM: It is so designated and I assume that that is what it is, and the ordinance referred to here is 105. I think it is incompetent, irrelevant and immaterial generally on behalf of the defendants I repre-

sent and showing on its face that it is a different ordinance than the one that was passed in February.

THE COURT: The objections will be overruled.

MR. NUZUM: Exception.

THE COURT: It will be admitted in evidence.

MR. GRIFFIN: (Reading:) "Mullan, Idaho, Jan. 23, 1924. The village trustees met in adjourned session in the village office, Jan. 23rd, 1924, at 7 p. m. Roll call: Present D. F. Clark, Chairman; D. R. McCord; Elmer Olson; C. B. Johnson and Arthur J. Harwood. J. E. Gyde, village counsel; Larry Dooling, Chief of Police; Joseph Martin, Clerk, and John Taylor, a member of the committee to fix the rate of license fees for each line of business in the city, were also present.

The sections of the ordinance fixing license fees, was gone over and the various fees agreed to and entered. The ordinance was read in its entirety and fully considered.

"The following resolution was then presented by Trustee Elmer Olson, who moved its adoption: Whereas, there is an emergency existing, making the passage of and placing in force ordinance No. 105, governing the licensing of all lines of business being and to be conducted within the city limits,—that ordinance No. one (1) of the village and statute No. 4062 of chapter 166, of the revised statutes of the State of Idaho, being an ordinance and a statute requiring the reading of all ordinances to be passed by city and village govern-

The bills were read as O.K'd by the finance committee. (See the list on file); moved and seconded that the bills be allowed and warrants drawn upon the treasurer in payment of the same. Carried. The treasurer's monthly report was read. Moved and second that the report be accepted as read. Carried. Moved and second that we adjourn. Carried.

“Joseph L. Martin, *Clerk*.

D. F. Clark, *Chairman of Board*.”

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MR. RAY: Designated as that.

MR. NUZUM: It is so designated and I assume that that is what it is, and the ordinance referred to here is 105. I think it is incompetent, irrelevant and immaterial generally on behalf of the defendants I repre-

sent and showing on its face that it is a different ordinance than the one that was passed in February.

THE COURT: The objections will be overruled.

MR. NUZUM: Exception.

THE COURT: It will be admitted in evidence.

MR. GRIFFIN: (Reading:) "Mullan, Idaho, Jan. 23, 1924. The village trustees met in adjourned session in the village office, Jan. 23rd, 1924, at 7 p. m. Roll call: Present D. F. Clark, Chairman; D. R. McCord; Elmer Olson; C. B. Johnson and Arthur J. Harwood. J. E. Gyde, village counsel; Larry Dooling, Chief of Police; Joseph Martin, Clerk, and John Taylor, a member of the committee to fix the rate of license fees for each line of business in the city, were also present.

The sections of the ordinance fixing license fees, was gone over and the various fees agreed to and entered. The ordinance was read in its entirety and fully considered.

"The following resolution was then presented by Trustee Elmer Olson, who moved its adoption: Whereas, there is an emergency existing, making the passage of and placing in force ordinance No. 105, governing the licensing of all lines of business being and to be conducted within the city limits,—that ordinance No. one (1) of the village and statute No. 4062 of chapter 166, of the revised statutes of the State of Idaho, being an ordinance and a statute requiring the reading of all ordinances to be passed by city and village govern-

ments, to be read at each of three successive regular meetings of such or village counsel, before being placed upon their final passage, be and the same are hereby suspended. The motion was second by C. B. Johnson, and after consideration the motion was placed upon its final passage by the Aye and Nay vote. D. F. Clark, Aye; Arthur J. Harwood, Aye; D. R. McCord, Aye; Elmer Olson, Aye; C. B. Johnson, Aye. Thereupon the chairman declares the motion unanimously carried. Ordinance No. 105 being an ordinance fixing license fees for all of business conducted within the city limits, was presented by Trustee Arthur J. Harwood, who moved its adoption. The motion was second by C. B. Johnson, trustee. And after due consideration, the motion was put by the chairman upon the aye and nay vote: D. F. Clark, aye; Arthur J. Harwood, aye; D. R. McCord, aye; Elmer Olson, aye; C. B. Johnson, aye. Thereupon the chairman declared the motion unanimously carried, and that ordinance No. 105 was duly adopted.

“Mr. Gyde, the village counsel, was requested to have the ordinance in the Wallace Miner for two issues. The question of protecting the village against any violation of ordinance No. 103, prior to its repeal, was considered. Moved and second that the bonds of all soft drink parlors holding license under said ordinance No. 103, be held for three months for the purpose of protecting the village against any violation of said ordinance, which might have occurred while it was in force and effect, during the year 1923. Carried.

Moved and second that we adjourn. Carried.

“Joseph L. Martin, *Clerk*.

“D. F. Clark, *Chairman*.”

“Call meeting of the village trustees, Jan. 28, 1924.

“Village trustees met in special session in the city office at 7 o'clock p. m., Jan. 28th, 1924. Roll call, present: D. F. Clark, Chairman; C. B. Johnson; Elmer Olson; D. R. McCord and Arthur J. Harwood. J. E. Gyde, village counsel; Larry Dooling and Joseph L. Martin, Clerk, were also present. The following call for the meeting was offered for reading and ordered placed on file, addressed to each member of the board of trustees and the village counsel; Dear Sir: At the request of Mr. Gyde, village counsel, the Mayor, D. F. Clark, has called a meeting of the village trustees for as near six-thirty p. m. as may be convenient, Monday evening, *May 28th day of Jan.* 1924. The business of the meeting will be further consideration of ordinance No. 105. Yours truly, J. L. Martin, Clerk.

“Mr. Gyde then explained in detail the reason for making the call for the meeting, and calling special attention to a late supreme court decision which affects the possibilities of ordinance No. 105 as drawn and passed by the board at an adjourned meeting of the board of January 18th, 1924. After due consideration of the reasons for recalling the said ordinance No. 105, and not having had the said ordinance published and placed upon the ordinance book of the village, the fol-

lowing resolution was introduced by Trustee Arthur J. Harwood, who moved its adoption;

“Whereas, a question has arisen to the constitutionality and validity of what is termed ordinance No. 105, passed by the trustees of the Village of Mullan on the 23rd day of January, 1924, and it is deemed advisable to withdraw said so-called ordinance No. 105, and not publish the same, and have a new ordinance drawn and passed which shall not be subject to the objections which may exist in the said so-called ordinance, in that it appears that it may be construed to be an ordinance to raise revenue by licensing certain business and occupations, and not solely for regulatory purposes.

“Therefore be it resolved, that the said so-called ordinance No. 105, be and the same is hereby withdrawn from the files, and that the vote thereupon be reconsidered, and that the said so-called ordinance No. 105 be not published, and that it be held, and hereby is held for naught and null and void in all particulars and that the village attorney for said village be and he hereby is directed to draft a new license ordinance providing for the regulation of certain business in said village with only such reasonable license fees provided as shall bear reasonable relation to the cost of such regulation, and in conformity with the views expressed in the decision of the supreme court of Idaho in the case of the State v. Nelson, 34 Idaho, 713.

“Trustee Arthur J. Harwood moved the adoption of the said resolution, which motion was second by Trustee D. R. McCord, which said motion was put

through an aye and nay vote, and the following trustees, D. F. Clark, aye; Arthur J. Harwood, aye; C. B. Johnson, aye; Elmer Olson, aye; D. R. McCord, aye; voted 'aye', and none 'nay', and the motion was by the chairman declared carried and the said resolution adopted.

"Thereupon the question of the adoption of the said ordinance was put to an 'aye' and 'nay' vote, and all trustees, to-wit: D. F. Clark, Arthur J. Harwood, D. R. McCord, Elmer Olson and C. B. Johnson, voted 'nay' and against the adoption and passage of said ordinance, and the chairman on behalf of all trustees directed the village attorney to prepare a new ordinance in conformity with the provisions of said resolution, to be presented at the regular meeting of the board on February 24, 1924. Moved and seconded that we adjourn. Carried.

"Joseph L. Martin, *Clerk.*

D. F. Clark, *Chairman.*"

Page 238, plaintiff's exhibit 5 is a record of the proceedings of the village trustees May 7, 1923.

MR RAY: I offer in evidence Government's exhibit No. 5-C, page 238, beginning with the third paragraph, and including the entire page.

MR. NUZUM: In behalf of my clients, I desire to object to any of these records of the Village of Mullan—I think they are competent, but I make this suggestion that there is a lot of stuff in there, such as passing on bills, and so-forth, that I do not see can have

anything to do with this transaction—contract with the electric company, and all that stuff, simply encumbers the record.

MR. RAY: If counsel will permit, I shall only read that portion of it—this is offered only for the purpose of showing the election of certain defendants as officials of the Village of Mullan.

THE COURT: If that is the purpose, it will be admitted.

MR. RAY: I will read it to the jury.

THE COURT: Very well.

MR. RAY: (Reading)

PROCEEDINGS OF THE RETIRING VIL- LAGE TRUSTEES, MAY 7th, 1923.

The biennial election returns were canvassed, of the election held in the Village of Mullan on the 24th day of April, 1923, and the returns from said election, as certified to the said Board of Trustees by the Judges and Clerks of said election, were opened in the presence of all the members of the Board of Trustees, and the Village Clerk, and from said returns the said Board found and does hereby find that the following named persons have received the number of votes placed opposite their respective names, to-wit: D. Forest Clark, 89; Arthur Harwood, 84; D. R. McCord, 84; Elmer Olson, 84; C. B. Johnson, 83; S. L. Thomas, 4; Arthur Heltness, 2; Samuel Duncon, 1; William Coumerth,

1; Martin Everett, 1; William Griemer, 1; John Hendrickson, 1; William McCullough, 1; Webb Leisure, 1; Henry Nyberg, 1; John Rantella, 1; George Winchester, 1.

And it appearing that the following named persons, to-wit: D. F. Clark, Arthur Harwood, C. R. McCord, Elmer Olson and C. B. Johnson, had received more votes for the office of Village Trustees than any of the other persons voted for at said election, the last said five named persons, were declared duly elected as Village Trustees for the said Village of Mullan for the term to be determined by lot as provided by law, and the Village Clerk was directed to issue a certificate of election to each of said last named persons, as the law provided. R. J. McLeod, W. J. McEacheran, J. R. Gaseheer, S. L. Thomas, Trustees.

Thereupon the City Clerk, Joseph L. Martin, issued the legally authorized certificates to each member elected, which certificates are on file. (See minutes of new book for this paragraph.)

At this time it was determined by lot that the Trustees elected at the last election should hold their offices as follows: Arthur Harwood and C. B. Johnson, for two years from the first Monday in May, 1923, and the Trustees Elmer Olson, D. F. Clark and D. R. McCord, for four years from the first Monday in May, 1923. The said determination by lot being made by placing five pieces of paper of identical size, texture and weight in a hat, on three were written the words "four years" and on two were written the words "two years", and

the respective trustees drew the said slips from said hat without what they drew being understood. That those drawing the slips with "four years" were to hold office for four years, and those with the words "two years" were to hold office for two years; and such lot resulted in the above-named trustees, D. F. Clark, D. R. McCord and Elmer Olson drawing the slips containing the words "four years", and the said trustees, C. B. Johnson and Arthur Harwood drawing the slips containing the words "two years."

Q. Calling your attention to page 267, plaintiff's exhibit 5, for identification, I will ask you generally what that purports to be?

A. That is a record of the proceedings of the Village Trustees of Mullan, May 4th, 1925.

MR. RAY: I offer in evidence as plaintiff's exhibit 5-D, page 267, having to do with the election returns of the Village Trustees.

MR. NUZUM: For the same purpose?

MR. RAY: Yes.

MR. NUZUM: On the part of Mr. Bloom and Mr. Weniger, I object to it as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. GRIFFIN: (Reading)

"The returns of the Village Election held April 28th, 1925, was handled by the Board, which returns made by the Election Board and Clerk are as follows, to-wit:

"The Board finding the election regular and the Judges' returns correct, declared the three regular can-

didates, John Wheatley, Arthur J. Harwood and C. B. Johnson, duly elected.

“And thereupon the Village Clerk was instructed to issue certificate of election to each elected member of the Board for their respective ensuing terms, which certificate was issued and signed. The new members of the Board were duly sworn as Trustees of the Village for the ensuing terms of office.”

Q. Referring to page 342, Plaintiff's Exhibit 5 for identification, I will ask you generally what that purports to be?

A. That is the proceedings of the Village Trustees for May 2nd, 1927.

MR. RAY: I offer in evidence page 342, Plaintiff's Exhibit No. 5, designated as Plaintiff's Exhibit No. 5-E, pertaining to the election of the Trustees of the Village of Mullan.

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of Mr. Weniger and Mr. Bloom.

THE COURT: Overruled. The exhibits will be admitted.

MR. GRIFFIN: (Reading)

“The canvassing of the election returns was first considered:

“Thereupon, it was moved and seconded that the returns of the biennial election held April 26, 1927, be canvassed. Unanimously carried. Thereupon the returns were opened, examined and canvassed; and from the same it was found that the following candidates

each received the number of votes set opposite their respective names, for the office of trustees for the Village of Mullan, to-wit:

Henry Foss	265	votes
John Wheatley	246	votes
Gust Almquist	198	votes
Charles Ristau	278	votes
Elmer Olson	192	votes
Richard Adams	213	votes

“Thereupon, the Trustee Harwood offered the following resolution:

“Whereas, on the 26th day of April, 1927, the regular biennial election was held in the Village of Mullan, Idaho, for the purpose of electing three Village Trustees, each to serve for the period of four years, and,

“Whereas, it appears that notice of said election was given in the manner and for the time provided by law, and the same was in all respects conducted in the manner provided for by law; and,

Whereas, it appears from a canvass of the returns of said election, this day made by the Board, that the following named candidates received the number of votes set opposite their respective names, to-wit:

Henry Foss	265	votes
John Wheatley	246	votes
Gust Almquist	198	votes
Charles Ristau	278	votes
Elmer Olson	192	votes
Richard Adams	213	votes

And it appearing that Henry Foss, Charles Ristau

and John Wheatley received the highest number of votes cast, and that each received a majority of all of the votes cast; therefore,

Be it resolved that Henry Foss, Charles Ristau and John Wheatley be and they hereby are declared the duly elected Trustees of the Village of Mullan, each to serve for the term of four years commencing with the first Tuesday in May, 1927.

Thereupon, Mr. Harwood moved the adoption of the foregoing resolution. The motion was seconded by Elmer Olson, and thereupon being put to a vote was unanimously carried."

Q. I show you page 318, of Plaintiff's Exhibit 5 for identification, and will ask you to state what proceedings appear on the first of that page?

A. Those are proceedings of the Village Trustees for May 6th, 1929.

MR. RAY: We offer in evidence as Plaintiff's Exhibit 5-F, that portion of page 588, of the minutes of the Village of Mullan having reference to the election returns had May 6, 1929.

MR. NUZUM: The same objection on behalf of Weniger and Bloom.

THE COURT: Overruled.

MR. GRIFFIN: That portion pertaining to the election reads:

"The returns of the biennial election of April 3rd, 1929, was handled, and the Clerk a certificate of the returns as reported by the Election Board was read, which showed that when the Election Board organized,

John McLeod, a member of the Board, was unable to attend and William Dean was appointed a Judge in his place. Mr. Gerald Monroe, a Clerk of the Board, was absent, and his wife was appointed to fill the vacancy. The Election Board was then composed of the following members: Judges: J. A. Glow, R. A. Martin and William Dean; Clerks: Mrs. Charles Ristau, Mrs. Tom Dooling and Mrs. Gerald Monroe. The Clerk then offered to open the sealed returns of said Board. The tabulated returns as presented by the Clerk showed that out of 421 voters registered, 349 had voted at the election; and that there were cast for the independent ticket, Arthur J. Harwood, 188 votes; for John Taylor, 162 votes, and for the Citizens ticket, W. H. Pruter, 158 votes and for George F. Price, 183 votes. The Board then declared by regular resolution, duly moved and second, that Arthur J. Harwood of the independent ticket and George F. Price of the Citizens ticket whom, having received a majority of all of the votes cast, to be duly elected Trustees of the Village of Mullan, for the four-year term, beginning May 6th, 1929. Unanimously carried. The new Trustees were then sworn in by the Village Clerk.

MR. GRIFFIN: I will read this paragraph above here:

“The question of Trustee Foss continuing as a member of the Board was presented and discussed. Mr. Foss stated that he is returning to Mullan with his family, and that he would continue on the Board if it was satisfactory to the other members. His declara-

tion of intention to return, was accepted by the Board, and Mr. Foss was continued a member.”

Q. Referring to pages 300 and 301, Plaintiff’s Exhibit No. 5 for identification, I will ask you to state what proceedings those are, beginning at the lower part?

A. Those are proceedings of the Village Trustees in regular session for December 7th, 1925, and continued on page 301.

MR. RAY: We offer in evidence as Plaintiff’s Exhibit No. 5-G, that portion of the minutes of the Village of Mullan of December 7th, 1925, having to do with the appointment of a Chief of Police.

MR. POTTS: I object to that as incompetent, irrelevant and immaterial.

MR. NUZUM: The same objection.

THE COURT: The objection will be overruled and the exhibit admitted.

MR. GRIFFIN: (Reading)

“The Village Trustees met in regular session at 7:30 p. m., December 7, 1925. Roll call, present: Charles B. Johnson, chairman; John Wheatley, Elmer Olson, A. J. Harwood and C. F. Clark. J. F. Martin, Clerk, and J. W. Florin, acting Chief of Police, were also present.

“The question of further consideration of the question of the resignation of the Chief of Police was taken up.

“Mr. A. J. Harwood moved that we elect Larry Dooling to complete the unexpired term of W. A. Pep-

per; J. W. Florin was placed in nomination; the voting was by ballot; roll call; resulted for Larry Dooling, C. F. Clark, aye; A. J. Harwood, aye; for J. W. Florin, John Wheatley, aye; C. B. Johnson, aye; and Elmer Olson, aye; J. W. Florin, having received the majority of the votes, was declared elected by the chairman."

Q. Referring now to pages 342 and 343 of Plaintiff's Exhibit 5, beginning at the lower end of page 342, Mr. Martin, I will ask you to state generally what that purports to be?

A. That is the proceedings of the Village Trustees in regular session for May 2nd, 1927, and continues on page 343.

MR. RAY: I offer in evidence as Plaintiffs' Exhibit No. 5-H, that portion of the minutes pertaining to the election of the Chief of Police.

MR. POTTS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objections overruled. Let the record show that counsel for Mr. Bloom and Mr. Weniger have the same objection, and it was overruled.

MR. GRIFFIN: (Reading)

"Present, A. J. Harwood, John Wheatley, Charles Ristau, Henry Foss, and newly-elected and incoming members, John Wheatley and C. B. Johnson being the holdovers from the old board, were also present.

"The chairman then declared the election of a Chief of Police to be in order. The Clerk read the following applications for the position: From M. D. Needham, F. O. Welch and H. H. Muchmore. Mrs. J. L. Mar-

tin acting as teller. The nomination of Mr. Welch was accompanied by a petition from a number of citizens, requesting his election. The votes being tallied, resulted in the election of Mr. Needham. The Chairman then declared Mr. Needham unanimously elected Chief of Police for the ensuing term of two years. The Chairman then declared the election of a night policeman in order. The applications of F. O. Welch, H. H. Noll, M. C. Haggard, were read. The votes being tallied, resulted in the unanimous election of F. O. Welch as night policeman. The Chairman then declared him elected. The Chief of Police and the night policemen were sworn in and went on duty at 9:00 o'clock p. m.

MR. RAY: I may state to the Court and counsel, that I desire to show the members in attendance at the Village Board meeting, from May 2nd, 1927, through to November, 1928, during the period in which Chief of Police Needham was Chief of Police, and I will ask if it is necessary to introduce—if counsel will object to the formal reading from the minutes the names of those present, or will you insist upon introducing every meeting.

MR. NUZUM: I have no objection to the manner, but I desire to make the same objection, incompetent, irrelevant and immaterial.

THE COURT: The objection on other grounds will be overruled. I understand there is no objection to the manner of proving who was present. You may read them to the jury.

MR. GRIFFIN: (Reading)

“Meeting of May 2nd, 1927. Roll call, present: A. J. Harwood, John Wheatley, Charles Ristau, Henry Foss, the newly elected and incoming members: John Wheatley and C. B. Johnson being the holdovers from the old board, were also present.

Meeting June 6, 1927: Present, A. J. Harwood, Chairman, Henry Foss, Charles Ristau, John Wheatley and Park Huston, J. L. Martin, Clerk; M. C. Needham, Chief of Police; William Downs, Street Overseer, and H. J. Howell Village Counsel, were also present.

Meeting of July 6, 1927; Roll Call, Present: A. J. Harwood, Chairman, Henry Foss, Park Huston; absent, John Wheatley, J. L. Martin, Clerk; M. D. Needham, Chief of Police, and William Downs, Street Overseer, were also present.

Regular session of August 1st, 1927. Roll Call: Present: A. J. Harwood, Chairman, Charles Ristau, John Wheatley, George Huston, Henry Foss, J. L. Martin, Clerk, M. D. Needham, Chief of Police and William Downs, Street Overseer, were also present.

Regular session of September 6th, 1927. Roll call: Present: A. J. Harwood, Chairman, John Wheatley, Charles Ristau, Henry Foss and George Huston, also, Mr. Howell, Village Counsel and William Downs, Street Overseer, M. D. Needham, Chief of Police and Mrs. J. L. Martin, acting Village Clerk.

Regular session, October 3, 1927. Roll call showed the following present: A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley and

Henry Foss. J. L. Martin, Clerk, and M. D. Needham, Chief of Police, William Downs, Street Overseer and H. J. Hull, Village Counsel, were also present.

Regular session, November 7th, 1927. Roll call: Present: A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley; absent, Henry Foss. J. L. Martin, Clerk, M. D. Needham, Chief of Police and William Downs, Street Overseer, were also present.

Regular session, of December 5, 1927. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, John Wheatley; absent, Henry Foss. J. L. Martin, Clerk, M. D. Needham, Chief of Police and William Downs, Street Overseer, were also present.

Regular session, January 3rd, 1928: Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, John Wheatley. Absent, Henry Foss, J. L. Martin, Clerk, and M. D. Needham, Chief of Police and William Downs, Street Overseer were also present.

Regular session, February 7th, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, Henry Foss. Absent, John Wheatley. J. L. Martin, Clerk and M. D. Needham were also present and William Downs, Street Overseer.

Regular session, March 5th, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, John Wheatley, Henry Foss, A. J. Hull, Village Counsel, J. L. Martin, Village Clerk, William Downs, Street Overseer, and M. D. Needham, Chief of Police, were also present.

Regular session, April 2nd, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, John Wheatley, Henry Foss. Absent, Charles Ristau. J. L. Martin, Clerk, H. J. Hull, Village Counsel, and M. D. Needham, Chief of Police and William Downs, Street Overseer, were also present.

Regular session, May 7th, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, Henry Foss, John Wheatley. J. L. Martin, Clerk, A. J. Hull, village counsel, M. D. Needham, Chief of Police and William Downs, street overseer, were also present.

Regular session, June 4th, 1928. Roll call, present: A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley. J. L. Martin, clerk, and A. J. Hull, counsel and M. D. Needham, chief of police and William Downs, street overseer, were also present. Absent, Henry Foss.

Regular session, July 2nd, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau, John Wheatley and Henry Foss. A. J. Hull, village counsel and M. D. Needham, Chief of Police and J. L. Martin, village clerk, were also present.

Regular session, August 6th, 1928. Roll call, present: A. J. Harwood, Chairman, John Wheatley, Henry Foss, George Huston. Absent, Charles Ristau. A. J. Hull, village counsel, J. L. Martin, Clerk, M. D. Needham, Chief of Police and William Downs, Street Overseer, were also present.

Regular session, September 4th, 1928. Roll call,

present: A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley. Absent, Henry Foss. A. J. Hull, village counsel, J. L. Martin, Clerk, and M. D. Needham, Chief of Police, were also present.

Regular session, October 1st, 1928. Roll call, present, A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley. Absent, Henry Foss. A. J. Hull, attorney, J. L. Martin, Clerk and M. D. Needham, Chief of Police, were also present.

Regular session, October 10th, 1928. Roll call, present: A. J. Harwood, Chairman, Charles Ristau, George Huston, John Wheatley and Henry Foss. H. J. Hull, attorney, J. L. Martin, Clerk and M. D. Needham, were also present. Absent, none.

Regular session, November 5th, 1928. Roll call, present: A. J. Harwood, Chairman, George Huston, Charles Ristau and John Wheatley. J. L. Martin, Clerk, and M. D. Needham, Chief of Police, were also present.

“Regular session, December 3rd, 1928. Roll call, present: A. J. Harwood, Chairman, Charles Ristau, John Wheatley, George Huston. Absent, Henry Foss. H. J. Hull, village counsel, and J. L. Martin, Clerk, were also present.”

Witness Martin (continuing)

As Village Clerk I attended to the issuing of licenses under Ordinance No. 105 after 1924. A form was prepared with the stub attached. Plaintiff's Exhibit 6, including 6-A to 6-1, both inclusive, are stub receipts for the licenses issued for the village for the various lines

of business conducted in Mullan during the years of 1924 to 1929, July 1st. The stub books contain the licenses for each of the several months during that period, except a portion of 1925. I have been unable to find it. That stub book is missing. I do not know how much of it was in 1925. I have endeavored to find it in the office and these stubs are a part of the files of the Village of Mullan. Exhibit 6-J is the stub receipts of license for a part of the year 1928; begins with August.

MR.. RAY: I renew the offer of plaintiff's Exhibit 6-A to 6-I, both inclusive.

MR. NUZUM: On behalf of the defendants I represent, I object as incompetent, irrelevant and immaterial.

THE COURT: The objections will be overruled and the exhibits admitted.

MR. RAY: Q. Mr. Martin, what was your practice as clerk with respect to issuing the monthly license for soft drink license?

A. On the first of each month, I wrote out the soft drink license for each soft drink parlor and delivered them to the Chief of Police for the month current.

I did not instruct the Chief of Police. The Chief took the licenses away from the office is all I know that he did with this license. He returned with the money thereafter and represented that he had collected fees represented by those licenses. The money was deposited in the bank. I entered it upon the cash book as treasurer and deposited it in the bank. I entered notations each and every month. There may have been an occasional

oversight in marking the stub paid. The money was deposited in the general fund. Exhibit No. 2 is a volunteer subscription list prepared by myself and given to the Chief of Police at the beginning of each month which states at the head what it is. I gave the Chief no instructions. Afterwards the chief returned these sheets to me with collections noted, for which sometimes I would receipt on the slip the entire amount received; other times portions of the amount received, as he might turn it in from time to time, and that money I deposited to the credit of the Village of Mullan as treasurer. At the end of the month those slips in Exhibit No. 2 were delivered to me. I received them, marked them for the current month, and filed them in the files of the village of Mullan, and they are a part of the files of the village. Exhibit No. 7, for identification, is subscription list prepared, which I prepared, and gave to the Chief of Police for volunteer subscriptions to the current fund of the village. It purports to cover a period from month to month. The first one covers May, 1925. It requires the two combined to make May. The next one covers June, turned in to me July 2, 1925. They cover month to month beginning with May, 1925 to June 1, 1929.

Q. I will ask you to observe plaintiff's Exhibit No. 7 for identification with relation to plaintiff's Exhibit No. 2 and state whether plaintiff's Exhibit No. 7 purports to cover the period of time from May, 1925 to June 1929 with the exception of the time covered by plaintiff's Exhibit No. 2. Examine it carefully.

MR. NUZUM: I object to it as incompetent, irre-

levant and immaterial on behalf of the defendants I represent.

THE COURT: It has not been offered yet.

A. It does.

MR. RAY: **Q.** Is plaintiff's exhibit No. 7 part of the files of the Village of Mullan?

A. It is.

Q. Did you pursue the same practice with respect to plaintiff's Exhibit No. 7 that you did with respect to plaintiff's Exhibit No. 2, when these slips were delivered to you from month to month?

A. I did.

Q. And deposited the money to your credit as to the treasurer of the Village of Mullan?

A. Yes sir. In each and every instance.

MR. RAY: We offer in evidence plaintiff's Exhibit No. 7.

PLAINTIFF'S EXHIBIT NO. 7

Mullan, Idaho, May, 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Street and Bridge Improvements, and the Inadequate provision made by Taxation to meet this needed improvement and Improvements in the Village, WE, The undersigned citizens hereby subscribe and pay to the Village of Mullan for said purposes, the amounts set opposite our respective names, upon our own initiative, for a Street and Bridge Fund.

Mike Conovich	\$25.00
Andy Haeiko	25.00
Chas Fond	25.00
John C. Taylor	25.00
M. F. LeGore	25.00
Edw. Johnson, Central Hotel	25.00
The Bolo	25.00
Mary Norman	25.00
Annie Tornberg	25.00
Alga Wickman	25.00
Nick Floroe	25.00
Mutt Mak	25.00

(MAY BRIDGE FUND, 1925)

Mullan, Idaho, May, 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Street and Bridge Improvements, and the Inadequate provision made by Taxation to meet this needed improvement and Improvements in the Village, WE, The undersigned citizens hereby subscribe and pay to the Village of Mullan for said purposes, the amounts set opposite our respective names, upon our own initiative, for a Street and Bridge Fund.

Chas. Fond	\$25.00
The Paronto Pool Hall	25.00
The Bolo	25.00
Mike Conovich	25.00
Yellow Stone Pool Hall	25.00

Central Hotel	25.00
Nick Floroe	25.00
M. F. LaGore	25.00
John E. Taylor	25.00
Annie Tornberg	25.00
Mary Norman	25.00
D. R. Luke	25.00
Bill	25.00
Yes	25.00

Mullan, Idaho, July 2, 1925.

TO WHOM IT MAY CONCERN:

Realizing the Great Need the Village of Mullan has for Street and Bridge Improvements, and the inadequate funds provided for this purpose by Taxation; WE, The undersigned citizens hereby voluntarily subscribe and pay to the Village for said purposes, the amounts set opposite our respective names for a Street and Bridge Fund:

Central Hotel	\$25.00
M. F. LeGore	25.00
Hotel Bilberg	25.00
Andy Haisko	25.00
Paul Sarto	25.00
The Bolo	25.00
D. R. Luke	25.00
Moose Cigar Store	25.00
Annie Tornberg	25.00
Mary Norman	25.00

Mike Conovich	25.00
Street & Bridge Fund	50.00

Mullan, Idaho, Aug. 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Street and Bridge Improvements, and the Inadequate provision made by Taxation to meet this needed improvement and Improvements in the Village, WE, The undersigned citizens hereby subscribe and pay to the Village of Mullan for said purposes, the amounts set opposite our respective names, upon our own initiative, for a Street and Bridge Fund.

Chas. Fond	\$25.00
D. R. Luke	25.00
Matt Maki	25.00
Andy Hailko	25.00
M. F. LeGore	25.00
Annie Tornberg	25.00
Mrs. Wickman	25.00
Central Hotel	25.00
The Bolo, Smith & Wilcox	25.00
B	25.00
Mary N. Jackson	25.00
Mike Conovich	25.00

Victor H.

Moose

Slot

Norman

Mullan, Idaho, Sep. 1, 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Bridge and Street Improvements, and the inadequate funds provided for this purpose from Taxation, WE, The Undersigned, hereby upon our own initiative, subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making improvements upon any Street or Bridge needed:

Central Hotel	25.00
M. F. LeGore	25.00
Nick Floros	25.00
Chas. Fond	25.00
The Bolo, R. O. Smith	25.00
Matt Maki Hupprensa	25.00
George Aro, Yellowstone Cigar Store	25.00
D. R. Luke	25.00
Alder Weickman	25.00
Mary Norman	25.00
Mike Conovich	25.00
Mrs. Mary Jackson	25.00
Annie Tornberg	25.00
B	25.00
Victor Hotel	25.00
Slots	25.00

Mullan, Idaho, Oct. 1, 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Bridge and Street Improvements, and the inadequate funds provided for this purpose from Taxation, WE, The Undersigned, hereby upon our own initiative, subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making improvements upon any Street or Bridge needed:

Central Hotel	25.00
M. F. LeGore	25.00
Nick Feloroe	25.00
Chas Fond	25.00
Matt Maki	25.00
Olisa Eckman	25.00
Andy Haisko	25.00
The Bolo	25.00
Annie Tornberg	25.00
Marie N. Jackson	25.00
D. R. Luke	

Mullan, Idaho, Nov. 1, 1925

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Bridge and Street Improvements, and the inadequate funds provided for this purpose from Taxation, WE, The Undersigned, hereby upon our own initia-

tive, subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making improvements upon any Street or Bridge needed:

Central Hotel	25.00
Chas Fond	25.00
Andy Haikko	25.00
Matt Maki	25.00
Nick Floros	25.00
John E. Taylor	25.00
M. F. LeGore	25.00
The Bolo, R. D. Smith	25.00
Annie Tornberg	25.00
Alkn Wickman	25.00
H. B.	25.00
George Bush	25.00
W. S.	25.00

Mullan, Idaho, Dec. 1, 1925.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Bridge and Street Improvements, and the inadequate funds provided for this purpose from Taxation, WE, The Undersigned, hereby upon our own initiative, subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making improvements upon any Street or Bridge needed:

Mullan Inn	\$10.00
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Farmers Cigar Store	10.00
Funk Hdw.	10.00
Central Hotel	25.00
White Front	10.00
The Bolo	25.00
The Pastime	25.00
M. F. LeGore	25.00
Hayeranda Pool Hall	10.00
Ano Co. Haiko	10.00
Red Front	10.00
Geo. Bush	15.00
Chas. Fond	35.00
H. B.	35.00
A. Haisko	10.00
H. A.	25.00

Mullan, Idaho, Jan. 2, 1926.

TO WHOM IT MAY CONCERN:

Realizing the great need the Village of Mullan has for Bridge and Street Improvements, and the inadequate funds provided for this purpose from Taxation, WE, The Undersigned, hereby upon our own initiative, subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making improvements upon any Street or Bridge needed:

Central Hotel	25.00
M. F. LeGore	25.00

The Miners Club	10.00
The Bolo	25.00
The Pastime	25.00
Chas Fond	35.00
Frank Hahn	10.00
Mullan Inn	10.00
Chili Parlor	25.00
H. B.	25.00
H. A.	25.00
Geo. Bush	5.00
Yellow Stone Cigar Store	10.00
Haperonda Pool Hall	10.00
	<hr/>
	265.00

Mullan, Idaho, 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has Generously Improved the Streets the past year, and that there will be need for more improvements upon the Streets and Bridges this year, **WE THE UNDERSIGNED**, Hereby contribute, upon our own Initiative, the amounts set opposite our respective names, for a Street and Bridge **FUND**, to be used for the purpose of making improvements upon any Street or Bridge where and when needed;

Central Hotel	\$25.00
Pastime Club	25.00
M. F. LeGore	25.00

Chas. Fond	25.00
Frank Hahn	10.00
Hayarando Pool Hall	10.00
Mullan Inn	10.00
Miners Club	10.00
Yellowstone Cigar Store	10.00
The Bolo	25.00
Noodle Parlor	25.00
Geo. Bush	5.00
H. B.	25.00
H. A.	25.00
	<hr/>
	265.00

Mullan, Idaho, Mch. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has Generously Improved the Streets the past year, and that there will be need for more improvements upon the Streets and Bridges this year, **WE, THE UNDERSIGNED**, Hereby contribute, upon our own Initiative, subscribe the amounts set opposite our respective names, for a Street and Bridge **FUND**, to be used for the purpose of making Improvements upon any street or bridge where and when needed:

Central Hotel	\$25.00
Pastime	25.00
Chas. Fond	35.00

Miners Club	10.00
Mullan Inn	10.00
Hayarando Pool Hall	10.00
M. F. LeGore	25.00
Ross Schermerhorn	10.00
The Bolo	25.00
Mrs. Lee Burns	25.00
Yellow Stone Cigar Store	10.00
Frank Hahn	10.00
Geo. Bush	5.00
H. B.	25.00
H. A.	25.00
	<hr/>
	275.00

Mullan, Idaho, Apr. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has Generously Improved the Streets the past year, and that there will be need for more improvements upon the Streets and Bridges this year, WE, THE UNDERSIGNED, Hereby contribute, upon our own Initiative, the amounts set opposite our respective names, for a Street and Bridge FUND, to be used for the purpose of making Improvements upon any Street or Bridge where and when needed:

Pastime Club	\$ 25.00 Pd.
The Bolo Club	25.00 Pd.
M. F. LeGore	25.00 Pd.

Central Hotel	25.00 Pd.
Miners Club	10.00 Pd.
The Mullan Inn	10.00 Pd.
Haporanda	10.00 Pd.
Chas. Fond	35.00 Pd.
Yellow Stone	10.00 Pd.
Frank Hahn	10.00 Pd.
Geo. Bush	5.00 Pd.
Red Front	10.00 Pd.
Noodle Parlor	25.00 Pd.
H. B.	25.00
A. H.	25.00
	<hr/>
	275.00
	145.00
	<hr/>
	130.00

Mullan, Idaho, May 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has Generously Improved the Streets the past year, and that there will be need for more improvements upon the Streets and Bridges this year, **WE, THE UNDERSIGNED**, Hereby contribute, upon our own Initiative, the amounts set opposite our respective names, for a Street and Bridge **FUND**, to be used for the purpose of making Improvements upon any Street or Bridge where and when needed:

Pastime Club	\$ 25.00 Pd.
The Bolo	25.00 Pd.
M. F. LeGore	25.00 Pd.
Central Hotel	25.00 Pd.
Yellowstone Cigar Store	10.00 Pd.
Miners Club	10.00 Pd.
Hoparanda Pool Hall	10.00 Pd.
Chas. Fond	35.00 Pd.
Mullan Inn	10.00 Pd.
The Mullan	10.00 Pd.
Red Front	10.00 Pd.
Noodle Parlor	25.00 Pd.
Geo. Bush	5.00 Pd.
H. B.	25.00 Pd.
H. A.	25.00 Pd.
	<hr/>
	275.00

Mullan, Idaho, June 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has Generously Improved the Streets the past year, and that there will be need for more improvements upon the streets and Bridges this year, WE, THE UNDERSIGNED, Hereby contribute, upon our own Initiative the amounts set opposite our respective names, for a Street and Bridge FUND, to be used for the purpose of making Improvements upon any Street or Bridge where and when needed:

Central Hotel	\$ 25.00
M. F. LeGore	25.00
The Bolo	25.00
Pastime	25.00
Chas. Fond	35.00
Old Camer Pool Hall	10.00
Yellow Stone Cigar Store	10.00
Miners Club	10.00
The Mullan	10.00
Marble Front	10.00
The Mullan Inn	10.00
Noodle Parlor	25.00
H. A.	25.00
H. W.	25.00
H.	5.00
	<hr/>
	275.00

Mullan, Idaho, July 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, **WE, THE UNDERSIGNED**, Hereby contribute, upon our own initiative, the amounts set opposite our respective names, to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

The Bolo	\$ 25.00
Pastime	25.00
Mike Conovich	25.00
K. M. Stark	25.00
Chas. Fond	25.00
M. F. LeGore	25.00
Mrs. H. Hill	25.00
Josephine Pinazza	25.00
Noodle Parlor	25.00
Mrs. Martin Everett	25.00
H. B.	25.00
A. H.	25.00
Mamie	25.00
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	350.00

Mullan, Idaho, Aug. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, WE, THE UNDERSIGNED, hereby contribute, upon our own initiative, the amounts set opposite our respective names, to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

Chas. Fond	\$ 25.00
Central Hotel	25.00

Giosefin Pinazzi	25.00
M. F. LeGore	25.00
Pastime	25.00
Mrs. K. M. Stark	25.00
Mike Conovich	25.00
The Bolo	25.00
Mrs. Martin Everett	15.00
Noodle Parlor	25.00
Mrs. H. Hill	25.00
H. B.	25.00
A. H.	25.00
Mamie	25.00
	<hr/>
\$340.00	340.00
Sept. 1st, J. L. M.	

Mullan, Idaho, Sep. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, WE, THE UNDERSIGNED, hereby contribute, upon our own initiative, the amounts set opposite our respective names, to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

Pastime Club	\$ 25.00
The Bolo	25.00

Jiosefin Pinazzi	25.00
Mrs. K. Stark	25.00
Chas. Fond	25.00
Noodle Parlor	25.00
Central Hotel	25.00
M. F. LeGore	25.00
Mrs. H. Hill	25.00
H. B.	25.00
A. H.	25.00
	<hr/>
	275.00

	Sept. 8th	85.00
		30.00
		35.00
		<hr/>
		150.00

Mullan, Idaho, Sept. 3rd, 1926.

TO THE VILLAGE TRUSTEES
OF MULLAN, IDAHO:

We, the undersigned business houses and citizens interested in the Protection of the Village from Fire and Burglary, and for the peace and orderly government of the community, hereby subscribe the amounts set opposite our respective names for a special Monthly Fund to employ a Night Policeman. The said fund to

be used strictly for police purposes:

J. A. Slover	10.00
Chas. Fond	10.00
The Bolo	10.00
Pastime Club	10.00
Mullan Garage	10.00
Home Toggery	10.00
M. F. LeGore	10.00
Taylor Motor Co.	10.00
Folys Garage	10.00
Snome Garage	10.00
Independent	
Market	10.00
Central Hotel	10.00
August Flink	\$10.00
Mrs. Beck	10.00
Ida Anderson	10.00
Steam Baths	10.00
Mrs. Wickman	10.00
Mrs. Pasvola	10.00
Eugenia Mingo	10.00
First National Bank	
Mullan, Idaho	
J. F. Wilson	5.00
City Bakery	5.00

Mullan, Idaho, Oct. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, WE THE UNDERSIGNED, Hereby contribute, upon our own initiative, the amounts set opposite our respective names, to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

Mrs. K. Stark	\$ 25.00
Jiosefin Pinazzi	25.00
M. F. LeGore	25.00
Central Hotel	25.00
Noodle Parlor	25.00
Pastime Club	25.00
Chas. Fond	25.00
Annie Tornberg	25.00
Mrs. A. Hill	25.00
The Bolo	25.00
H. B.	25.00
A. H.	25.00
	<hr/>
	300.00

O. K. J.L.M.

Mullan, Idaho, Oct. —, 1926.

TO THE VILLAGE TRUSTEES
OF MULLAN, IDAHO:
GENTLEMEN:

We, the undersigned business houses and citizens interested in the protection of Village from Fire and Burglary, subscribe the amounts set opposite our respective names for a Monthly Special Police Fund, to place a Night Policeman on for the said protection, Peace and Orderly Government. The said fund to be used strictly for Police purposes:

J. A. Glover	10.00 Pd.
Taylor Motor Co.	10.00 Pd.
Wallace Lbr. Co.	5.00 Pd.
Snomi Garage	5.00 Pd.
A. Flink	\$10.00 Pd.
Mrs. Wickman	10.00 Pd.
Mrs. Ponalla	10.00 Pd.
M. F. LeGore	10.00 Pd.
Mullan Garage	10.00 Pd.
Pastime	10.00 Pd.
Home Toggery	10.00 Pd.
Hotel Bilberg	10.00 Pd.
Mrs. Anderson	10.00 Pd.
Daniel Connors	10.00 Pd.
Central Hotel	10.00 Pd.
First National Bank	

Mullan, Idaho

J. F. Wilcox 5.00 Pd.

	115.00
Meat Market	10.00
	125.00
	60.00
	45.00
	170.00

Mullan, Idaho, Nov. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, **WE THE UNDERSIGNED**, Hereby contribute, upon our own initiative, the amounts set opposite our respective names, to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

Pastime Club	\$ 25.00
Noodle Parlor	25.00
M. F. LeGore	25.00
Annie Tornberg	25.00
Jiosefin Panazzi	25.00

Mrs. H. Hill	20.00
The Bolo	25.00
H. B.	25.00
H. A.	25.00
Mrs. Storcki	20.00
Central Hotel	25.00 Pd.
	<hr/>
	290.00

Mullan, Idaho, Nov. 1, 1926.

TO THE VILLAGE TRUSTEES

OF MULLAN, IDAHO:

GENTLEMEN:

We, the undersigned business houses and citizens interested in the protection of Village from Fire and Burglary, subscribe the amounts the amounts set opposite our respective names for a Monthly Special Police fund, to place a Night Policeman on for the said protection, Peace and Orderly Government. The said fund to be used strictly for Police purposes:

Taylor Motor Co.	\$ 10.00
M. F. LeGore	10.00
Chas. Fond	10.00
Mullan Garage	5.00
First National Bank, Mullan, Idaho	5.00
A. G. Silfrost	5.00
Morrow Retail Store	5.00

Independent Market	10.00
	60.00
	85.00
	<hr/>
	145.00
Mr. Flink	10.00
Mrs. Anderson	10.00
Mrs. Wickman	10.00
Mrs. Taballa	10.00
Home Toggery	10.00 Pd.
Central Hotel	10.00
J. A. Glowe	10.00
Wallace Lbr. Co.	5.00
Pastime Club	10.00
	<hr/>
	85.00

Mullan, Idaho, Dec. 1, 1926.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, and that the Board of Trustees have plans for many additional improvements in Streets and Bridges, for this year, WE THE UNDERSIGNED, Hereby contribute, upon our own initiative, the amounts set opposite our respective names to be placed in the Street and Bridge Fund, to be used as directed by the Village Trustees upon the Streets and Bridges when needed:

Pastime Club	\$25.00
M. F. LeGore	25.00
Annie Tornberg	25.00
Jiosefin Pinazza	25.00
Chas. Fond	25.00
Central Hotel	25.00
Bolo	25.00
Noodle Parlor	25.00
K. M. Stark	25.00
Mrs. A. Hill	20.00
A. H.	25.00
H. B.	25.00
	<hr/>
	295.00

Mullan, Idaho, Dec. 1, 1926.

TO THE VILLAGE TRUSTEES
OF MULLAN, IDAHO:
GENTLEMEN:

We, the undersigned business houses and citizens interested in the protection of Village from Fire and Burglary, subscribe the amounts set opposite our respective names for a Monthly Special Police fund, to place a Night Policeman on for the said protection, Peace and Orderly Government. The said fund to be strictly for Police purposes:

M. F. LeGore	10.00
J. A. Glowe	10.00

Home Toggery	10.00
Taylor Motor Co.	10.00
Chas. Fond	10.00
Central Hotel	10.00
Mothers Cafe	10.00
First National Bank, Mullan, Idaho	5.00
Mike Conovich	10.00
	<hr/>
	85.00
	75.00
	<hr/>
	1 60.00
	135.00
	<hr/>
	25.00 Bal.
Mr. Frink	10.00
Mrs. Anderson	10.00
Mrs. Pavalla	10.00
Mrs. Wickman	10.00
Nick DeMars	10.00
Wallace Lbr. Co.	5.00
Morrow Retail Store	5.00
Louie Zalnernik	10.00
John Sekulic	5.00
	<hr/>
	75.00

VILLAGE OF MULLAN

November 1, 1924.

TO WHOM IT MAY CONCERN:

Knowing the great need the Village of Mullan has for Street and Bridge Improvements, and the inadequate funds provided for this purpose by taxation, we, the Undersigned, hereby subscribe the amount set opposite our respective names for a Street and Bridge Fund, to be used for the purpose of said improvements:

Peter Zounick, Stack Hokna St.	\$25.00 Paid
Emil Johnson, Central Hotel	25.00 Paid
John Maki Hoproter Bar	25.00 Paid
Tona Partty, Yellowstone Cigar Str.	25.00 Paid
The Bolo, R. V. Smith	25.00 Paid
John Hartoto, Pool Hall	25.00 Paid
Red Front, Pool Hall	25.00 Paid
Matt Krobat, Montana Pool	25.00 Paid
Victor Hotel, Club	25.00 Paid
Bilberg Hotel	10.00 Paid

Mullan, Idaho, Dec. 1, 1924.

TO WHOM IT MAY CONCERN:

Knowing the great need the Village of Mullan has for Street and Bridge Improvements, and the Inadequate funds provided for this purpose by Taxation, WE THE UNDERSIGNED, hereby subscribe the amount set opposite our respective names for a Street

and Bridge Fund, to be used for the purpose of making said improvements:

Stone and Tovgard Pool Hall	25.00 Paid
Matt Krobat Pool Hall	25.00 Paid
Yellowstone Cigar Store	25.00 Paid
Matt Maki Pool Hall	25.00 Paid
Central Hotel, Ed. Johnson	25.00 Paid
Hance Sole Pool Hall	25.00 Paid
Nick Floroe, Harry Pappers	25.00 Paid
Chas. Fond, Hotel Bilberg	25.00 Paid
The Bolo, Smith & Wilcox	25.00 Paid
M. F. LeGore	25.00 Paid
Peter Zounick	25.00 Paid
Wm. Hedlund	25.00 Paid
Goe Scott Campbell	25.00 Paid
John Taylor Club	25.00 Paid
Whale	25.00 Paid
Idaho Hole Sale	25.00 Paid

Mullan, Idaho, Dec. 1, 1924.

TO WHOM IT MAY CONCERN:

Knowing the great need the Village of Mullan has for Street and Bridge Improvements, and the Inadequate funds provided for this purpose by Taxation, WE, THE UNDERSIGNED, hereby subscribe the amount set Opposite our respective names for a Street and Bridge Fund, to be used for the purpose of making said improvements:

Peter Zounick, Slack Holman	\$25.00 Paid
Matt Korbatt, Mont. Bar	25.00 Paid
M. F. LeGore Pool Hall	25.00 Paid
Johnson & Anderson, Central Club	25.00 Paid
Hans Sole, Red front	25.00 Paid
Mike Dinurin, Moose Club	25.00 Paid
Smith & Wilcox, Bolo Club	25.00 Paid
Bilberg Hotel	10.00 Paid
John Maki, Hapnala Bar	25.00 Paid
John Rantala, Mullan Pool Hall	25.00 Paid
Yellowstone Cigar Store	25.00 Paid
Victor Club	25.00 Paid
Whale	25.00 Paid
Idaho Hole Sale	50.00 Paid
Annie Tornberg	25.00 Paid
Bell Russell	25.00 Paid
Mary Norman	25.00 Paid
Olga Wickmin	25.00 Paid
Mary N. Jackson	25.00 Paid
Mary Smith	25.00 Paid
Wm. Hedlund	25.00 Paid
Mike Conavi	25.00 Paid

Mullan, Idaho, Jan. 1, 1927.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many Improvements in the Streets, during the past year, and that there is many improvements yet needed in both Streets and Bridges for the year 1927, WE, THE UN-

DESIGNED, hereby contribute upon our own Initiative, the amounts set opposite our respective names, to be used as directed by the Village Trustees for Improvements on the Streets and Bridges for the month of, 1927:

The Bolo	\$25.00
Chas. Fond	35.00
Pastime Club	25.00
Noodle Parlor	35.00
Central Hotel	35.00
Quick Lunch	35.00
M. F. LeGore	25.00
Mullan Pool Hall	10.00
Babe Murray	10.00
Miners Club	10.00
Bertha Stran	10.00
The Mullan Inn	10.00
Marble Club	10.00
Yellowstone	10.00
H. B.	25.00
H. A.	25.00

Mullan, Idaho, Feb. 1, 1927.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many Improvements in the Streets, during the past year, and that there is many improvements yet needed in both Streets and Bridges for the year 1927, WE,

THE UNDERSIGNED, hereby contribute upon our own Initiative, the amounts set opposite our respective names, to be used as directed by the Village Trustees for Improvements on the Streets and Bridges for the month of, 1927:

CENTRAL HOTEL	\$35.00
M. F. LeGore	35.00
Chas. Fond	35.00
Quick Lunch	35.00
Noodle Parlor	35.00
The Mullan Inn	10.00
J. P. Ainsworth	10.00
Max Slude	10.00
Muckers Club	10.00
The Mullan	10.00
The Miners Club	10.00
H. B.	25.00
H. A.	25.00
	<hr/>
	285.00
	140.00
	<hr/>
Street & Bridge	145.00
Mch. 5, 1927	\$145.00
Feb. 26 "	140.00
	<hr/>
	285.00

Mullan, Idaho, Mch. 1, 1927.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, during the past year, and that there is many improvements yet needed in both Streets and Bridges for the year 1927, WE THE UNDERSIGNED, hereby contribute upon our own initiative, the amounts set opposite our respective names, to be used as directed by the Village Trustees for Improvements on the Streets and Bridges for the month of March, 1927:

M. F. LeGore	\$35.00
Chas. Fond	35.00
Noodle Parlor	35.00
Central Hotel	35.00
Quick Lunch	35.00
Babe Kelly	10.00
Mucker Club	10.00
Max Slade	10.00
Mullan Pool Hall by Chas. Hartley	10.00
The Mullan Inn	10.00
Miners Club	10.00
Marble Club	10.00
A. P. Ainsworth	10.00
Norman Stevens	10.00
The Bolo	10.00
H. B.	25.00
H. A.	25.00
	<hr/>
	\$325.00

Mullan, Idaho, Apr. 1, 1927.

TO WHOM IT MAY CONCERN:

Realizing that the Village of Mullan has made many improvements in the Streets, during the past year, and that there is many improvements yet needed in both Streets and Bridges for the year 1927, **WE THE UNDERSIGNED**, hereby contribute upon our own initiative, the amounts set opposite our respective names, to be used as directed by the Village Trustees for Improvements on the Streets and Bridges for the month of April, 1927:

M. F. LeGore	\$35.00
Central Hotel	25.00
Mullan Pool Hall	10.00
Josefin Pinazzi	25.00
The Mullan Inn	10.00
Marble Club	10.00
Muckers Club	10.00
Chas. Fond	25.00
H. B.	25.00
H. A.	25.00
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	190.00

Mullan, Idaho, Nov. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, is \$445,352.25 and a levy of Fifteen (15) Mills, which is the maximum levy allowed by

law to be made by the Trustees of said Village for General Revenue purposes, will produce approximately \$6,500.00—and

WHEREAS, It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and sewers therein, now

THEREFORE, the undersigned residents of said Village do hereby, in order to assist in the maintenance of said Village Government, VOLUNTARILY contribute to the General Fund of said Village, the sum set opposite our respective names to be used for the maintenance of the said Village Government:—

NAME	DATE	AMOUNT
Cash	Recd.	(\$ 35.00
Coffee Shoppe	67.50 71.25	(7.50
	J.L.M. R.M.M.11-8-28	(
Smoke House		(25.00
Betty From D. Needham	Recd. 11-9-28	(
J.L.M. RMM		(3.75
Legore Store		(35.00
Cash		(15.00
Mrs. J. Pozer		(5.00
Cash	11-22-'28	(25.00
Minge	Received \$90.00	(10.00
Moeni	J.L.M.	(10.00
Coffee Cup		(25.00
Mary Norman		(15.00
Cash	11-30-'28	(10.00
Hunter	Received \$140.00	(35.00

Jimmy Ryan	J. L. Martin	(	25.00
Mrs. Dalo		(	5.00
Josephine		(	15.00

Mullan, Idaho, Dec. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, is \$445,552.25 and a levy of Fifteen (15) Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes, will produce approximately \$6,-500.00—and

WHEREAS, It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and sewers therein, now,

THEREFORE, the undersigned residents of said Village do hereby in order to assist in the maintenance of said Village Government, VOLUNTARILY contribute to the General Fund of said Village, the sum set opposite our respective names to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Nov. 30 Bolo		(\$ 35.00
Cash		(25.00
Cash	Dec. 1st, 1928	(7.50
Cash	Received \$122.50	(20.00
Chas. Fond	J. L. Martin	(35.00
Cash		(35.00

Yellowstone		(	16.00
M. F. LeGore		(	35.00
Hunter		(	35.00
Cash	Dec. 29, 1929	(	5.00
Mary Norman	Rec. \$276.00	(	10.00
Cash	J. L. Martin	(	25.00
Tony Flamender		(	10.00
Mingo		(	15.00
Mrs. Dalo		(	5.00
Coffee Cup		(	25.00
Jimmy Ryan		(	25.00
Smoke House		(	35.00
Josephine	Dec. 31, 1928	(	10.00
Mavis	Rec. \$77.50	(	10.00
Cash Fern rooms	J. L. Martin	(	10.50
Babe Kelly		(	12.50

Mullan, Idaho, Jan. 1, 1929.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village of Mullan, is \$445,552.25 and a levy of Fifteen (15) Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes, will produce approximately \$6,500.00—and

WHEREAS, It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and sewers therein, now,

THEREFORE, the undersigned residents of said Village do hereby in order to assist in the maintenance of said Village Government, VOLUNTARILY contribute to the General Fund of said Village, the sum set opposite our respective names to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Cash	Jan. 2nd	(\$ 35.00
Cash		(7.50
The Hub	Jan. 29, 1929	(35.00
Cash	Received \$223.50	(7.50
Legores Store	J. L. Martin	(35.00
Cash		(5.00
Jones		(25.00
Hunter		(35.00
Cash		(3.50
Cash		(5.00
Mr. Pazer		(5.00
Cash		(25.00
Mingo		(10.00
Coffee Cup		(12.50
Bolo	Jan. 30, 1929	(35.00
Cash	Received \$82.50	(25.00
	J. L. Martin	
	306.00	

Mullan, Idaho, Feb. 1, 1929.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the Village

of Mullan, is \$445,552.25 and a levy of Fifteen (15) Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes, will produce approximately \$6,-500.00—and

WHEREAS, It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and sewers therein, now,

THEREFORE, the undersigned residents of said Village do hereby in order to assist in the maintenance of said Village Government, VOLUNTARILY contribute to the General Fund of said Village, the sum set opposite our respective names to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Cash	Feb. 6th	(\$15. Pd.
Helen Cash	" 10th	(7.50
Spick Cash	" 10th Received	(25.00
Mona—Cash	" 13th \$61.00	(7.50
Coffee Cup	" 13th 2-18-'28	(12.50
J.L.M.		
Mrs. Dalo	20	(5.00
Irene	22	(5.00
Fern Rooms	23	(1.50
Irene	25	(5.00
Hazel	26	(7.50
Mary Norman	27 Received \$215 (50\$15.00	
Anna	27 Feb. 28, 1929	(15.00
Mingo	27 J.L.M.	(10.00

Hunter	27	(	35.00
Cash	27	(	5.00
Coffee Shop	27	(	10.00
Legores Store	27	(	35.00
Bolo	27	(	35.00
Jimmie Ryan	27	(	25.00
Mch Rept. Coffee Cup	28	(	12.50
		Received	(
(Mona	28	\$22.50	(
(Coffee House	28	Feb. 28, 1929	(
		J.L.M.	
		March report	

Mullan, Idaho, March 1, 1929.

TO WHOM IT MAY CONCERN:

WHEREAS. The assessed valuation of the Village of Mullan, is \$445.552.25 and a levy of Fifteen (15) Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes, will produce approximately \$6,-500.00—and

WHEREAS. It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and sewers therein, now.

THEREFORE, the undersigned residents of said Village do hereby in order to assist in the maintenance of said Village Government, **VOLUNTARILY** contribute to the General Fund of said Village, the sum

set opposite our respective names to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
	Coffee Shop Mar. 2	(\$10.00
Babe	Cash 3	(10.00
Kelly		(
	Irene 6 3-28-28	(5.00
	Cash 12 Received	(25.00
Hazel	Cash 13 \$175.00	(7.50
Gibbs	Irene 12 J.L.Mar-	(5.00
	Helen tin	(7.50
	M. F. LeGore	(35.00
	Hunter Hotel	(35.00
	Bolo	(35.00
<hr/>		
A. West	Cash	(10.00
	Smoke House	(35.00
Marie	Cash 3-28-'29	(5.00
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	Coffee House Received 50.00	(25.00
	Irene J. L. Martin	(5.00
	Mrs. Bazer	(5.00
	Coffee Cup 3-29-29	(15.00
	Mrs. Dalo Received \$55.00	(5.00
	J. L. Martin	

Mullan, Idaho, Apr. 1, 1928.

TO WHOM IT MAY CONCERN:

WHEREAS, The Assessed Valuation of the Vil-

lage of Mullan, County of Shoshone, State of Idaho, is \$445,552.25 and a levy 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for general revenue purposes, will produce approximately, \$6,500.00, and

WHEREAS, It requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein, now

Therefore, the undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntary contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Cash		(\$ 25.00
Babe Kelly Cash		(15.00
Helen Cash		(7.50
Fern Rooms		(2.00
" " Babe		(3.50
Fern Rooms	Received	(2.00
Smoke House	\$208.00	(35.00
Bolo	Apr. 29, 1929	(35.00
Mrs. Paza		(5.00
Hunter	J.L.M.	(35.00
Macri		(8.00
West Cash		(10.00
Coffee Cup		(25.00
Dew Drop Inn	Received	(25.00

M. F. LeGore	\$107.50	(35.00
Jimmy Ryan, Fern Rooms Apr. 30, 1927		(2.50
Nick & John, Cash	J.L.M.	(25.00
Cash		(20.00
	208.00	
	107.50	
	<hr/>	
	315.50	
	<hr/>	

Mullan, Idaho, May 1, 1929.

TO WHOM IT MAY CONCERN:

WHEREAS, the assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, for the year 1928 is \$467,597.00 and a levy of 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes and will approximately, \$6,750.00; and

WHEREAS, it requires considerably more than that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein; now

Therefore, the undersigned residence of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntarily contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Cash		(\$25.00

	Mingo		(	10.00	
	Fern Rooms		(	3.50	
	Marie		(	3.50	\$7.00
	Dollie		(	15.00	
Babe	Cash		(	25.00	
	Cash		(	5.00	
	Bolo		(	35.00	
	Legore	Received	(	35.00	
	Emily	\$297.50	(	6.00	
	Babe	5-3-29	(	2.50	
	Dew Drop Inn	J.L.M.	(	25.00	
	Jimmie Ryan		(	12.50	
	Hunter		(	35.00	
	Josephine		(	10.00	
	Mingo		(	10.00	
	Macri		(	8.00	
	Cash		(	25.00	
	Cash—Mrs. Paza		(	10.00	

Mullan, Idaho, June 1, 1929.

TO WHOM IT MAY CONCERN:

WHEREAS, the assessed valuation of the Village of Mullan, County of Shoshone, State of Idaho, for the year 1928 is \$467,597.00 and a levy of 15 Mills, which is the maximum levy allowed by law to be made by the Trustees of said Village for General Revenue purposes and will approximately, \$6,750.00; and

WHEREAS, it requires considerably more than

that sum to conduct the business of said Village and maintain the Streets, Bridges and Sewers therein; and

Therefore the undersigned residence of said Village of Mullan, in order to assist in the maintenance of said Village Government, do hereby Voluntarily contribute to the General Fund of said Village, the sum set opposite our respective names, to be used for the maintenance of the said Village Government:

NAME	DATE	AMOUNT
Cash		(\$10.00
Marie		(7.50
Fern Rooms		(13.00
Annie Tornberg		(15.00
Mary Norman	Received	(10.00
Cash	\$155.50	(10.00
Cash, Babe	J. L. Martin,	(15.00
Cash, Dolly	Treas.6-29-'29	(10.00
Cash, Josephine		(15.00
Coffee Shop		(25.00
Betty Reed		(7.50
Rose Smith		(7.50

MR. NUZUM: I object to it as incompetent, irrelevant and immaterial on behalf of the defendants I represent.

THE COURT: The objections will be overruled and the exhibits admitted.

MR. RAY: Q. Mr. Martin, approximately how

much revenue did the Village of Mullan derive from the issuance of these soft drink licenses and these payments denoted by plaintiff's Exhibit No. 2 and No. 7 per year during the period of time from 1925 to June, 1929?

THE COURT: If this witness made a computation of it and you are just intending to prove the result of his computation—

MR. RAY: That is all, your Honor.

THE COURT: The objection is overruled. If you have computed the amounts and know what they are you may state for the convenience of the jury. Of course, the exhibits themselves will speak in the event there is any dispute about it.

A. About \$7,200.00, I think. I would have to see the compilation and go over it and check before I could state definitely the amount received annually.

MR. RAY: Q. Mr. Martin, at my request did you prepare a compilation or a table from Plaintiff's exhibit No. 6 to 6-J both inclusive, and plaintiff's exhibit No. 2 and No. 7, of the amounts of money appearing from those exhibits as being paid into the treasury of the Village of Mullan month by month during the period of time covered by those exhibits.

A. I checked and oked such a compilation with these books.

Q. You know it to be correct?

A. I do.

Q. And did you include in that compilation any of the licenses issued by the Village of Mullan other than

the soft drink licenses, twenty-five dollars a month, and the names appearing as being paid on plaintiff's exhibits No. 2 and No. 7?

THE COURT: Do you mean by twenty-five dollars the amount of the license?

MR. RAY: Yes sir.

A. None other than the license I included except the volunteer subscriptions, they are included in this statement.

EXHIBIT NO. 8, compilation by Mr. Martin, offered by plaintiff; withdrawn.

MR. RAY: Q. Handing you Exhibit No. 10 for identification, I will ask you to state to the court what that purports to be.

A. Those are monthly reports beginning in May 2, 1927, prepared and delivered to each member of the board of trustees at each regular meeting since May 2, 1927 up to and including July 1, 1929; submitted by me as clerk of the Village of Mullan; they are a part of the records and files of the Village of Mullan.

MR. RAY: We offer in evidence plaintiff's exhibit No. 10.

MR. POTTS: On behalf of the clients I represent, I object to that as incompetent, irrelevant and immaterial.

MR. NUZUM: On behalf of those I represent, I offer the same objection.

THE COURT: Overruled. It may be admitted.

WITNESS MARTIN: A. I submitted a copy of the ordinance to each member of the council. On the report of June 6, 1927 it says, "New Form, Treasurer's Monthly Report, submitted June 6, 1927, and after that date I had issued a monthly report to the Village Trustees as per May 2, 1927. At the request of the Mayor, this additional review of subscriptions was made to the subscription list. That was circulated and entered on the monthly report, and I presume I used that word "new form" just to designate that change from the original form of monthly report.

THE COURT: You said the Mayor— did you mean Harwood?

A. Yes.

Q. The itemization was made at his request?

A. Yes; that itemization was taken from plaintiff's Exhibit No. 2.

MR. RAY: Now I will read this to the jury:

**NEW FORM, TREASURERS MONTHLY
REPORT, SUBMITTED JUNE 6, 1927**

DONATIONS TO GENERAL FUND:

Wm. Hedlund	\$ 25.00
Mrs. J.F. Ainsworth	\$25.00
Cash, (Knutson)	25.00
Mullan Pool Hall	25.00

Miners Club	25.00
Muckers Club	\$ 25.00
M. F. LeGore	35.00
Chas. Fond	35.00
Josefin Pinazza	25.00
Mary Smythe	\$25.00
Cash ?	25.00
Central Hotel	35.00
Mullan Inn	25.00
Mrs. Olka Wickman	10.00
Mrs. Amanda Back	10.00
August Flink	5.00
Mrs Ida Anderson	10.00
Mrs. Edla R. Heikle	20.00
Mrs. Pearl Johnson	15.00
Yellowstone Cigar S	25.00
Arthur Rumble	1.50
A. Anderson	2.00
Jack Swanson	15.00
Stevens Hotel	10.00
Lee Bell	10.00

Total for May, '27 \$ 513.50

ON ANNUAL LICENSES:

Mullan Garage. (R. R. Station)	6.00
Geo. Solomon	5.00
Continental Oil Co.	12.00
John Assaith	5.00

Total Annual and Daily License 28.00

Donation Column, Ford	513.50
<hr/>	
Second Total, Two Incomes	\$ 541.50
ALL OTHER RECEIPTS:	
County Tax	\$ 524.60
County License	16.00
City Taxes	12.28
City License	382.50
Fines & Forfeitures	277.25
Building Permits	4.00
Plumming Permits	1.00
Interest,	.29
Dog tax	59.00
Rents	6.00
<hr/>	
Total Receipts for May, 1927	\$ 1824.42

EXHIBIT 10 was monthly reports of the village treasurer to the village council made monthly and the foregoing is a copy of one of such reports, the others being similiar thereto.

MR. RAY: Have you fixed in your mind the 20th of November, 1928?

A. Yes sir. On the 20th of November, 1928 a special meeting was called by request of Mayor Harwood to consider the ratification of an act of the board out of session in reference to the discharge of Mr. Needham. Harwood, Wheatley, Huston and Ristau were present. A motion was made by Huston that the action of the board at the former meeting be ratified as to the dis-

charge of Mr. Needham as Chief of police. Seconded by Ristau. Mr. Wheatley withdrew from the meeting before the motion was put for action. Wheatley stated that he believe Mr. Needham should have a hearing before such action was taken. The motion was carried by the three present. I do not know what former meeting was referred to. Something was said as to a discussion that the members had had at a meeting on November 8th, following a regular session at which I was not present, and I understood this meeting was for the purpose of ratifying the informal action taken at that time. I was directed to write a letter notifying Mr. Needham that he had been discharged. Exhibit No. 11 is the letter I wrote in pursuance to the instruction.

MR. RAY: I offer in evidence plaintiff's Exhibit No. 11.

MR. NUZUM: Object on behalf of Weniger and Bloom on the ground that it is immaterial.

THE COURT: Overruled.

MR. RAY: I will read this exhibit: (Reading)

"November 21st, 1928.

Mr. M. D. Needham,

Mullan, Idaho.

Dear Sir:

I am directed by the Mayor, Mr. A. J. Harwood, to inform you that at a called meeting held the evening of November 20th, the action of the Board on November

8th asking your resignation effective November 10th was by resolution confirmed.

Yours truly,

J. L. Martin,

Village Clerk.”

MR. RAY: Q. When, if you know, was Mr. Welch appointed Chief of Police?

A. The 9th of November, 1928 and he is still Chief of Police.

Q. What was the practice followed by Mr. Florin as Chief of Police with respect to the issuance to these licenses and the subscriptions indicated by plaintiff's Exhibit No. 7?

MR. POTTS: The same objection.

MR. BANDELIN: The same objection, and further, that is not the best evidence.

THE COURT: Overruled.

A. There was no difference in the practice. There was a difference in the amount of money that was turned into me as Treasurer of the city.

Q. What can you say with respect to the time that Welch has been in office prior to July 1st of this year?

A. The practice was the same.

Q. What action was taken by the members of the village council of Mullan about the 1st of July of this year with respect to the issuance of \$25.00 soft drink licenses or the subscriptions indicated by Exhibits 2 and 7?

MR. POTTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. The practice was discontinued July 1st, 1929. There was an informal meeting after a regular meeting on July 2, when the matter was discussed. All the trustees were present except possibly Foss.

MR. RAY: I show you page 391 of plaintiff's Exhibit No. 5, and will ask you to state what the proceedings at the beginning about the middle of page 393, what they indicate?

A. Indicates a regular Trustees' meeting, July 1st, 1929.

MR. RAY: I offer in evidence page 391 of plaintiff's Exhibit No. 5 for identification, same being designated 5-I, showing the members of the village council present at that meeting.

MR. WERNETTE: I object to that as incompetent, irrelevant and immaterial.

MR. NUZUM: The same objection.

THE COURT: Overruled.

MR. RAY: I shall read this:

“The village trustees met in regular session in the village office July 1st, 1929 at 7:00 p. m. Roll call, present, A. J. Harwood, Chairman, Charles Ristau, George S. Price, John Wheatley. Absent, Henry Foss. J. L. Martin, Clerk, and F. O. Welch, Chief of Police were also present.”

Q. Before proceeding, does this refresh your memory to the extent that you can tell who was present at this meeting?

A. It has. Harwood, Wheatley, Ristau, and

THE COURT: Huston?

MR. RAY: Huston or Price?

A. Huston was present at that meeting. And Mr. Welch was also. I stated—

MR. NUZUM: I object to anything that he stated as incompetent, irrelevant and immaterial.

THE COURT: Overruled. Go ahead.

A. I stated to the members of the board of trustees that I had seen Mr. Hull a few days prior to that, and in consultation with him —

MR. POTTS: Now I object to that.

THE COURT: Overruled.

MR. WERNETTE: I think it is hearsay and not binding upon the defendants.

THE COURT: Overruled. He is relating what he told to these members.

A. (Continuing) In conversation or consultation with Mr. Hull he directed me that it would be proper for the board of trustees to be informed that the best procedure for them to adopt would be to discontinue the collection of soft drinks licenses and the circulation of the volunteer subscription list for raising funds for the expense of the village.

Q. Did you tell them any reason that Hull had given you for that, if he did say anything?

MR. NUZUM: The same objection.

THE COURT: Confine yourself now to what you reported to the members of the board.

A. I told them that Mr. Hull stated that the Government Prohibition Officers were making an investigation of the situation existing in the district, what was being done in that line, and that his advice was that we discontinue that practice.

Q. Thereupon what was done by the members?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. They directed me to require the Chief of Police to discontinue that practice.

Q. Did you do so?

A. I did.

Q. Thereafter have you issued any soft drink licenses—\$25.00 a month license?

MR. NUZUM: Object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I have not issued any soft drink licenses since then. No money has been delivered to me on subscriptions like Exhibit No. 7 since. I have not delivered any

blanks to the Chief of Police since. Hull was the city attorney until February 1st of this year. He acted as official counsel for the village at times since. The names of the so-called soft drink licenses were first brought into the office by applications made by the various parties. That was before Needham's administration. New names appeared from time to time as they would make application for licenses.

MR. RAY: At this time we offer to continue reading from the minutes of the village of Mullan, plaintiff's Exhibit 5 for identification, the names of the trustees present at each regular session after December, 1928, up to and including November, 1929.

THE COURT: Showing the names of the members of the board that were present at the several meetings.

MR. RAY: I beg your pardon, sir.

THE COURT: Showing the names of the members of the board that were present at the several meetings.

MR. RAY: And the officers of the village?

THE COURT: Yes.

MR. POTTS: We object to that as immaterial and incompetent.

THE COURT: The objection is overruled.

MR. NUZUM: We all have that objection.

THE COURT: I understand there is no objection to the manner of it.

MR. NUZUM: Oh, no, not to the method, your Honor.

MR. RAY: I do not understand that this is to be marked, your Honor, but just read.

THE COURT: No, just the reading of each meeting.

MR. GRIFFIN: (Reading) "Regular session of July 7, 1929, Present: A. J. Harwood, present, Charles Ristau, George Huston, John Wheatley, Henry Foss, H. J. Hull, Village Counsel, J. L. Martin, Clerk, and F. O. Welch, Chief of Police.

"Regular session February 4, 1928. Present: A. J. Harwood, the chairman; Charles Ristau, George Huston. Absent: John Wheatley and Henry Foss. H. J. Hull, Village Counsel, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session March 4, 1929. Present: A. J. Harwood, chairman; George Huston, Charles Ristau and John Wheatley. Absent: Henry Foss. J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session April 1, 1929. Present: A. J. Harwood, Charles Ristau, George Huston, John Wheatley. Absent: Henry Foss, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session May 6, 1929. Present: A. J. Har-

wood, chairman; Charles Ristau, John Wheatley, George Huston, Henry Foss. Absent: None. J. L. Martin, Clerk and F. O. Welch, Chief of Police were also present.

It is headed, "incoming board May 6, 1929. Present: A. J. Harwood, Henry Foss, John Wheatley, Charles Huston and George S. Price, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session June 3, 1929. Present: A. J. Harwood, Chairman; Charles Ristau, John Wheatley, George S. Price. Absent: Henry Foss, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session July 1, 1929. Present: A. J. Harwood, Chairman; Charles Ristau, George S. Price, John Wheatley. Absent: Henry Foss, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session August 5, 1929. Present: A. J. Harwood, Chairman; Charles Ristau, John Wheatley, Absent: George S. Price, Henry Foss, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session September 3, 1929. Present: A. J. Harwood, Chairman; Henry Foss, John Wheatley, George S. Price. Absent: Charles Ristau, J. L. Martin, Clerk and F. O. Welch, Chief of Police, were also present.

"Regular session October 7, 1929. Present: A. J.

Harwood, Chairman; George S. Price, Charles Ristau, John Wheatley. Absent: Henry Foss. J. L. Martin, Clerk and F. O. Welch, Chief of Police were also present.

“Regular session November 4, 1929. Present: A. J. Harwood, Chairman; John Wheatly, Charles Ristau, Henry Foss. Absent: George S. Price. J. L. Martin, Clerk and F. O. Welch, Chief of Police were also present.”

CROSS EXAMINATION

BY MR. POTTS: Witness Martin:

The sources of income from the Village of Mullan were the regular tax levy, fines and forfeitures, soft drink license, volunteer subscriptions, dog license, building permits and plumbing permits, et cetera. There were three general sources of income, the general property tax, the license or permit fines and volunteer subscriptions or donations. All of these methods have been in vogue in Mullan for many years. The money from licenses was all deposited in the bank to the credit of the Village of Mullan. It went for the payment of the general running expenses of the city by vouchers, or warrants, the city warrants. The money received by me from the voluntary subscriptions represented by plaintiff's Exhibit No. 2 was used in payment of the general running expenses of the city. The money represented by plaintiff's Exhibit No. 7 was deposited and used for

the same purpose. No part of it was paid over directly or indirectly to any member of the village council. None of these defendants or their predecessors received any salary for the performance of their official duties. When Foss, Wheatley and Ristau were either elected or appointed the same sources of raising revenue had been in existence in Mullan for some time. I am familiar with Ordinance No. 105, the license ordinance. The matter of enacting that ordinance was first presented November 5, 1923. The meeting of the council shows that was the first step in the preparation of such an ordinance which afterwards was Ordinance No. 105.

Exhibit No. 12, defendant's exhibit No. 12 was offered and received in evidence, page 244 of the minute book.

MR. POTTS: This is Page 244 of the minute book, identified as defendant's exhibit No. 12: "Proceedings of the village trustees in regular session November 5, 1923. John Taylor of the Victor Hotel, appeared before the board and presented a plan for increasing the revenue of the village by licensing all business houses. The proposition was given attention and duly discussed. It was postponed for further consideration at a later date."

Witness: This matter was considered again prior to the meeting of January 18, 1924.

Defendant's Exhibit No. 13 offered in evidence is the proceedings of the village trustees in regular session January 7, 1924. That was the next step that led up to the enactment of Ordinance No. 105.

MR. POTTS: We offer in evidence defendant's Exhibit No. 13.

MR. RAY: No objection.

THE COURT: It may be admitted.

MR. POTTS: (Reading): "Proceedings of the village trustees in regular session, January 7, 1924.

"The Village trustees met in regular session in the village offices, at 7 p.m. Roll call: Present, D. F. Clark; Chairman; Arthur J. Harwood, C. B. Johnson, Elmer Olson. Absent: C. R. McCord; J. E. Gyde, Village Counsel, Larry Dooling, Chief of Police, and Joseph L. Martin, Clerk were also present. The minutes of the previous meeting were read. Moved and seconded, that the minutes be approved as read. Carried. The following bills were read. (See filed list); Moved and seconded, that the bills be allowed as read and O.K'd by the finance committee, and warrants drawn upon the treasurer in payment of the same. Carried. The communications were read and placed upon file.

"The following houses made application for license to sell soft drinks and conduct pool and billiard parlors; Bilberg Hotel; Stockholm Pool Hall; Bolo Soft Drink Parlor; Conovich Pool Hall; Mullan Pool Hall; Central Hotel; International Hall; Victor Hotel; Harwood's Drug Store; Miners Home. Following the reading of the above applications the question of having a new ordinance drawn covering all lines of business was discussed. Moved and seconded that

the village counsel be requested to draw a new ordinance whereby all lines of business may be required to contribute towards the support of the village government, to take the place of the present one, No. 103. Carried. Moved and seconded, that a committee of three be appointed by the chair to schedule the tax rate proportionately among the owners of the various business in the village. Carried. The chair appointed Arthur J. Harwood, C. B. Johnson and Elmer Olson, members of the village trustees, and John Taylor and J. B. Wilcox, citizen members.

“Before adjournment it was mutually agreed that when the board adjourns, it will be an adjourned meeting until Tuesday evening, January 15, 1924. Moved and seconded that we adjourn to January 15th. Carried.

Witness: The matter was taken up again January 18, 1924. Page 245, the minutes of the meeting of January 18, 1924 is the proceedings of the village trustees at an adjourned regular session, adjourned from January 15, 1924, purporting to contain proceedings with reference to enactment of Ordinance No. 105.

MR. POTTS: We offer in evidence defendant's Exhibit No. 14.

MR. RAY: No objection.

THE COURT: Let it be admitted.

MR. POTTS: (Reading:) “Mullan, Idaho, January 18, 1924. The trustees met in adjourned session in the city office at 7 p.m., January 18, 1924. Roll call:

Present, D. F. Clark, Chairman, Elmer Olson; C. B. Johnson; D. R. McCord; and Arthur J. Harwood. Larry Dooling, Chief of Police; and Joseph L. Martin, Clerk, were also present. J. B. Wilcox and John Taylor, citizen members of the committee to schedule the license fees for the various branches of business for the new ordinance, were also in attendance.

“Ordinance No. 105 was read in its entirety. Reread section at a time, and the committee on fees for the licenses to be granted to all lines of business and the required notations were entered, and the ordinance referred to the village council for redraft. The clerk was instructed to mail the corrected ordinance to Mr. Gyde, the village counsel, at once with the request that he redraft it as soon as possible and mail it back for inspection before Wednesday night, to which date it had been agreed to adjourn when the trustees were ready for adjournment. Moved and seconded that we adjourn to Wednesday night at 7 p.m., the 23rd day of January, 1924. Carried. Joseph L. Martin, Clerk. D. F. Clark, Chairman.”

Q. Was this citizen's committee present at this meeting of January 18, 1924?

A. Yes sir. They discussed with members of the trustees the plan for collecting revenues by license. They made a recommendation as to the amount of licenses to be fixed. It included a recommendation of \$25.00 per month for soft drink places. I do not remember whether they were there on January 7, this committee, at the meeting of the council. Taylor might

have been present at the council meeting January 7, but I don't think Wilcox was. Taylor was there at the meeting in November, I think. Wilcox is cashier of the First National Bank of Mullan and was, at that time. From time to time other citizens of Mullan were present in connection with this matter but not at these meetings when the committee met. The matter was next taken up at the meeting of January 23, 1924. The minutes of that meeting are already in evidence as plaintiff's Exhibit 5-B and the ordinance was adopted at that time. On January 28, 1924, being plaintiff's Exhibit 5-B, the council read Mr. Gyde's communication, but the reference there in that exhibit is not to Ordinance No. 105 but to 106, being an ordinance for assessing for license, etc. There is no further reference to ordinance 105 in the minutes of the meeting of the board of trustees of the village of Mullan after the meeting of January 28, 1924. The license ordinance offered in evidence here as plaintiff's Exhibit 4-A is ordinance No. 105. I prepared the form of the licenses issued by the village subsequent to 1923 and up to 1926. That is, I think it was a license that was probably in stock from some other city and I did the clerical work in issuing the licenses. These were issued on application filed by different classes of business requiring license. I think in 1923 or 1924 the chief of police began delivering the licenses and during some periods the licensee was required to come to my office and get their license. Do not know whether I changed it or the council. I secured the services of the chief of police to deliver the licenses and collect the money. Year-

ly licenses were issued the first of the year. Monthly licenses the first of each month given to the chief of police to collect the money and return it. As to plaintiff's Exhibit No. 7, I prepared the headings. The heading was the same up until about 1926. The heading is as follows:

MR. POTTS: (Reading):

Mullan, Idaho, May....., 1925.

TO WHOM IT MAY CONCERN: Realizing the great need the village of Mullan has for street and bridge improvements, and the inadequate provision made by taxation to meet this needed improvement and improvement in the village, we, the undersigned citizens hereby subscribe and pay to the village of Mullan for said purpose the amount set opposite our respective names upon our own initiative, for a street and bridge fund."

A. The city council suggested I have this heading and I worded it myself and it was true, and I believed it was true, and from information I had as clerk of the Village of Mullan, I knew it was true. Subscriptions were solicited for other purposes among the people of Mullan from time to time.

MR. POTTS: Plaintiff's Exhibit No. 7, under date of September 3, 1926, reads: "Mullan, Idaho, September 3, 1926: TO THE VILLAGE TRUSTEES OF MULLAN, IDAHO: We, the undersigned business houses and citizens interested in the protection of the

village from fire and burglary, and for the peace and orderly government of the community, hereby subscribe the amount set opposite our respective names for the special monthly fund to employ a night policeman. Said fund to be strictly used for these purposes.”

Q. Did you draw that heading?

A. I drew the heading, gave it to the Chief of Police. We had no funds at that time to pay the night police. This was circulated in good faith to provide funds for the purpose named and a night policeman was employed.

Q. The heading on subscription list in plaintiff's Exhibit No. 2 reads as follows: “Mullan, Idaho,.....:

TO WHOM IT MAY CONCERN:

WHEREAS. the assessed valuation of the village of Mullan, county of Shoshone, Idaho, is \$400,123.00, and a levy of fifteen mills, which is the maximum levy permitted by law to be made by the Trustees of said village for general revenue purposes, will produce approximately \$6,000.00; and,

WHEREAS. it requires considerably more than that sum to conduct said Village government and maintain the streets, bridges and sewers therein;

THEREFORE, the undersigned residents of the said village of Mullan, in order to assist in the maintenance of said village government hereby voluntarily contribute to the general fund of said village, the sum set opposite their respective names:”

A. I did not prepare the original. Mr. Hull prepared it. He is the village attorney. I provided the figures. I knew the statements were true. I had the records of the village showing the amount of money that was received in the village treasury each year and from all sources. The record will show how the money was expended. I compiled the total of the receipts and expenditures of the village from 1923 on. These records are at Mullan. They are my report to the Village Trustees as Village Treasurer. The money was paid out by city warrants and returned and redeemed by checks.

CROSS EXAMINATION

BY MR. WALKER:

Q. Do you know Bertha Strom?

A. I know Bertha Strom. She always paid a license at my office. Babe Kelly paid a license at my office two or three times, not regularly.

Q. Judge Martin, was there any conversation between you and Bertha Strom, or you and Babe Kelly, in regard to their possession, or sale, or manufacture of intoxicating liquor in their places of business?

A. No, sir, not that I remember of.

Q. Was there anything expressed or implied—anything expressed, when they came to pay their license in regard to protection against the United States Government or the village officers or other officers, in re-

gard to violations of the National Prohibition Act?

A. No sir.

RE-DIRECT EXAMINATION

BY MR. RAY:

Q. What kind of a license did you issue to Bertha Strom?

A. A license to conduct an apartment house in the Fern Apartments. The charge was \$25.00.

Q. With respect to the minutes of the Board of February 4th, 1924, in making reference to Ordinance No. 106, being the ordinance providing for assessment for licensing of every line of business conducted within the city limits, what, if anything, have you to say as to the No. 106 referring to the occupational ordinance?

MR. NUZUM: That was introduced in the record, ordinance No. 106. It was voted upon and passed upon. It is the record of a public official. I object to it on that ground in the first place, and in the second place I object to the question as incompetent.

THE COURT: Will you read the question, Mr. Hamilton?

(Question read by reporter.)

THE COURT: Overruled. The number appearing there was by error, either upon the part of Mr. Guide, or myself. I wouldn't undertake to fix the responsibility for numbering it 106 instead of 105 as it

should be numbered.

Q. No. 106 refers to ordinance No. 105.

MR. NUZUM: That would be a conclusion of the witness.

THE COURT: Overruled.

A. Yes.

Subscriptions, plaintiff's Exhibits No. 2 and 7, were not taken from any persons except in two or three instances, than that places of prostitution, liquor dispensing or gambling, and the payments were made except in two or three instances by persons engaged in said business. I do not know the size of the Fern Apartments. I do not know how many rooms are in the Hunter Hotel. The license to the Hunter Hotel, Exhibit 6-F, dated January 3, 1929, to the Hunter Hotel for the business of the hotel, lodging, tobacco, cigars, for the term of one year, \$18.00 and issued under the annual ordinance license for conducting rooming and boarding house. License to Bertha Strom, business Fern Apartments, term one month, April 2, 1928 was for one month, to May 1st, 1928, \$12.50; and No. 4128 for \$12.50, both a part of Exhibit 6-F, was issued under ordinance for license for soft drinks. License of Babe Kelly, being plaintiff's Exhibit No. 6-A, September 8, 1926, Fern Hotel Apartments, for term of one month to October 3, 1926, for \$25.00 was issued under the soft drink license. I do not remember the license for hotel and lodging places. The license fees vary, but a resolution afterwards was passed by which I was guided to some extent in issuing licenses.

RE-CROSS EXAMINATION

BY MR. POTTS:

In answering that every name on the list with two or three exceptions on Exhibit No. 7 were for prostitution, intoxicating liquors or gambling. I find the name of the Mullan Garage under date of September 3. It does not come under any one of those three headings. The Home Toggery is listed there, but does not come under any of the three headings. The First National Bank of Mullan, Idaho was not under any of those three headings; Taylor Motor Company, Storage Garage, Leona Garage, Independent Market were none of them under those three headings, and in the list under October, on Exhibit No. 7, the Wallace Lumber Company, Leona Garage, Home Toggery, First National Bank of Mullan and the Meat Market are all there, and are not included in the category. On the November list, in Exhibit No. 7, the Taylor Motor Company, Mullan Garage, First National Bank, Morrow Retail Store, Independent Market, none of these were under those three headings. That is true of the Home Toggery, Wallace Lumber Company, and that is true of the December list of the Home Toggery, Taylor Motor Company, First National Bank, Wallace Lumber Company, Morrow Retail Store. They do not come under that list and are all on said subscription.

CROSS EXAMINATION**BY MR. WALKER:**

The stub of the license issued to Bertha Strom, February 1st, shows the business, apartments, and the Miners Club, January 1, 1929, the business is "cigars, tobacco and confectionery."

I issued this license to Bertha Strom for soft drinks when opposite the business blank is written 'apartments,' because it was issued under that section of Ordinance 105 and for the business that I was given to understand she was conducting; it was issued for \$25.00.

RE-DIRECT**BY MR. RAY:**

Bertha Strom and Babe Kelly paid the money and took the license in the amounts indicated.

JAMES E. GYDE, witness on behalf of plaintiff, testified:

DIRECT EXAMINATION**BY MR. RAY:**

My name is James E. Gyde, my residence is Wallace, Idaho. I am a lawyer, practicing the profession at the Idaho Bar, of which I have been a member over thirty-five years. I was counsel for the Village of Mullan, Shoshone County, Idaho, in years 1923 and 1924. I advised the Village Council and members thereof with re-

spect to Ordinance No. 105, and occupational tax ordinance passed February 4, 1924. I drew the ordinance. I think probably I was requested to draw it at the first meeting in January in 1924. I drew a rough outline of the ordinance, provided for different occupations and businesses, leaving the amount of the license blank. I returned that to Judge Martin, requesting that he submit it to the trustees for their consideration and to add such businesses, if I had overlooked any, and put in the amounts of license for the various occupations. In course of time it was returned with some interlineations, riders attached and the like, and I redrew and redrafted the ordinance including the amounts furnished and that draft was adopted. I think, on the 23rd of January as a revenue ordinance under the statute. Later some question came up about complying with a Supreme Court decision and I redrafted the ordinance as a regulatory measure to meet the Supreme Court's idea upon the subject, expressed in the case of *State v. Nelson*, 36 Idaho, 713. The thing that called my attention to the classification of business was the soft drink parlor license.

“I was present at the council meeting at which Ordinance 105 was adopted. I am not sure whether it was then or January 23, 1924, that I discussed soft drink licenses with the trustees. I said to them that it seemed that this \$25.00 you charge for soft drink parlors is too large. They cannot afford to pay it and you must not attempt to license the sale of intoxicating liquor. I told them, in substance, that there was a very drastic law in

Idaho against that sort of thing, imposing a very serious penalty for doing that sort of thing, and they must not do it. I told them of Section 2643, Compiled Statutes of Idaho which provides, among other things, that the attempting to license the sale of intoxicating liquors is a felony punishable by imprisonment for from one to five years and disqualifying them, if found guilty, from forever holding any office in the county or state, and read them the provisions of the statute. I continued to act as village counsel until the first Monday of May, 1925.

At the council meeting at which I made the above statements, there was present G. Forest Clark, Chairman, and others. I cannot say positively, that every member of the Board was present. At that time the members were: G. Forest Clark, D. R. McCord, Elmer Olson, Charles Johnson and Mr. Harwood. Clark, McCord and Johnson are now dead and Olson is in the hospital. In addition, the clerk, Mr. Martin, was present. I do not recall that J. B. Wilcox, the banker, or John Taylor, garage man, were present, nor whether any other citizens were there. This meeting was around January 23 or February 4. I was usually present at all meetings. When the ordinance was adopted, a copy was given me with the request to publish it in the Wallace Miner. I think I requested a special meeting of the Board to reconsider passage of the Ordinance. The original ordinance 105, adopted January 18, 1924, included the amount of license fees. I redrafted the ordinance after the Supreme Court decision of *State v. Nelson*.

I saw Ordinance 105 after it was subsequently adopted February 4, 1924.

When I suggested that the trustees couldn't legally license the selling of intoxicating liquor, Clark stated that there would be nothing of that kind done. That this licensing would have the effect of reducing the number of soft drink parlors to two and they can pay the license."

H. J. HULL, witness on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is H. J. Hull; I live in Wallace, Idaho, Shoshone County. I am an attorney, and have been such for seventeen years. I was counsel for the Village of Mullan from May, 1925 to December, 1928. While I was such counsel the practice of issuing soft drink licenses by the Village of Mullan was brought to my attention and I discussed the matter with members of the Village Council. I first took it up with the entire members. Charles Johnson was one of them. Later I discussed it with the other members of the council, Mr. Wheatley, Mr. Foss and Mr. Harwood, but I am not positive about Harwood. That was in the summer and fall of 1927 at my home in Wallace. I was employed as attorney by the Village Trustees of Mullan and these three trustees had come to consult with me with reference to the business of the village, and the communica-

tion made by them to me and the advice given by me thereon related to the business of the village trustees.

MR. WERNETTE: We object on behalf of my defendants on the ground that the evidence sought to be elicited is hearsay, incompetent, irrelevant and immaterial.

MR. BANDELIN: And the same objection that Mr. Wernette made as to the clients that I represent.

THE COURT: And the objections will be overruled.

A. I told them that if collections were being made from anyone engaged in an unlawful business, it was an unlawful practice and should be stopped. The conversation was about as follows: They stated or expressed the thought and belief that there was nothing wrongful about the practice inasmuch as they were not personally profiting by it, and further that they did not think or did not consider that the Federal Prohibition enforcement of officers would be intended to disturb the situation up there, and further, that they were merely expressing the wish or will of the community in this practice.

THE COURT: Gentlemen of the Jury, at this point I wish to charge you concerning the place in this case that the testimony of the witness just upon the stand, Mr. H. J. Hull, occupies, to the end that you may not be confused and that it may be confined to its proper sphere. The only defendants now upon trial

whom the witness named as being present at the meeting at his home, concerning which he testified, were the defendants, Wheatley and Foss. He said that he was not sure whether Mr. Harwood was present. I, therefore, instruct you as a matter of law that this testimony of this witness is to be considered by you solely in connection with the guilt or innocence of the defendants Wheatley and Foss and must not be taken into account by you in connection with the case of any of the other defendants now on trial. I am expressing no opinion concerning the weight of the testimony or its credibility, but in your deliberations you may give such credence to it and such effect to it as in your judgment it is entitled to have, but in doing that you must confine it to the case of the defendants Wheatley and Foss and not extend it to the case of any other person now on trial.

WILLIAM BARRON, witness called on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is William Barron. I reside at the present time at Butte, Montana; I am a miner; that has been my occupation for the last three years; been engaged in mining in Butte for the last year. I have been engaged in mining in Northport, Washington, Kellogg, Idaho and I have been in Mullan, Idaho. I went to Mullan about the middle of March, 1928; re-

mained in Mullan about six months, working in the Morning Mine and in the You Like Lease. When I was in Mullan I gave information to Johnson and Webb, Prohibition Agents, Federal with respect to the liquor traffic in Mullan. I know Mona McDonald, one of the defendants. She was in Mullan when I was there. In the middle of July, 1928 I purchased liquor in her place on two occasions. I know Babe Kelly. She was in Mullan when I knew her and had a place in Wallace and one in Mullan—the Coffee Shop in Mullan. I bought liquor on one occasion from her. I know Bertha Strom. She was in the Fern rooms in Mullan. I purchased some beer from her. After giving information to Webb and Johnson I signed an affidavit. I went to Mullan to make searches with Webb and Johnson. We searched the Coffee Shop and Mona McDonald's. We found some stuff, but I cannot say what. By "stuff" I mean some beer and some whisky; beer at Mona McDonald's. The search was at night on the 6th of August, 1928. On the 7th of August I was in Wallace and saw R. E. Weniger, the defendant. He arrested me. I was walking down the street and saw him and another lady and Bloom talking together; the lady we used to call Barney. She was from Mullan. She was over the Marble Front keeping a sporting house. I saw her, Weniger and Bloom together. They were talking. I was walking by on the street. This lady came over to me and tried to call me dirty names and everything, and she reached her hand for me and I just took her hand to knock her hand down so she would not hit

me, and she lay down and so Weniger and Bloom came over and arrested me and threw me in jail. After I was arrested and thrown in jail I saw Johnson and Webb come into the jail about a half hour later. I heard a conversation between Weniger and Johnson and Webb. Chief Needham was present, and when Johnson and Webb came in Weniger says, "I got your Federal stool pigeon here." Weniger said that. He said, "What do you mean by it?" Then after they called me out they wanted to know if I was a Federal man or if I was not.

Q. Who did?

A. Weniger, and they had quite a few heated words between them. He says, "I wish you would stay out of my county," he said, "I can look after my county better without your help."

Q. Who said that, and to whom was it said?

A. Weniger.

Q. To whom did he say it?

A. Well, Webb and Johnson was there.

Q. Did you keep any records of your buys or any purchases of whiskey that you made?

A. I did. I kept it in a little book, and had that book on me at the time I was arrested by Mr. Weniger, and when he searched me and found the book and looked it over he bawled me out, he says, "You should not do anything like that, go ahead and stool on these people." I said, "I did not stool. I warned them before. I told them I was going to do it." Weniger said to me, "I will deport you into Canada if you come up here from Can-

ada and try to get smart. I will deport you to Canada.” This conversation was in Wallace, Shoshone County, Idaho. Needham was there but I do not think he was there at the time that he told me that he was going to deport me, just me and Weniger was there at the time he was telling me he was going to deport me and was bawling me out after he looked over the book.

CROSS EXAMINATION

BY MR. NUZUM:

I did not push the woman over. I did not reach my hand to push the woman over. She laid down and I never pushed her. I was found guilty of assault and sentenced to pay a \$100.00 fine and serve thirty days in jail and I served all of the time. The woman called me dirty names. She called me a son-of-a-bitch and stool pigeon and bastard and everything a fellow could think of. It was just across the street from the court house at Wallace. I do not know Charles Cartwright. I do not think he was there. I am pretty sure it was Weniger and Bloom. Am sure Bloom was there. They both took me to jail. Bloom came over with Weniger to me; both of them came over there and arrested me and took me to jail. The woman's face did not show any marks or bruises. I did not touch her. I did not say anything back to her. I am positive I did not strike her and knock her down. I had a trial and I plead guilty to assault. I think it was assault. I plead guilty to whatever the charge

was. If my testimony is true I did not assault her and I did not strike her and I had done nothing at all, and still I plead guilty because I had to, because the boys inside was beating me up, and Weniger wanted me to make a statement that I gave to the county attorney there, and he told me, he says, "If you will plead guilty, we will let you off on a \$10.00 fine." Weniger and I were alone when he made this statement and I plead guilty on the statement I would only get \$10.00.

Q. Now, when you got more than ten dollars did you say anything to the court that "this man has got me to plead guilty and told me that I would only get ten dollars?"

A. No, I did not say nothing.

It was in Judge Shearer's court that I plead guilty, I had an attorney by the name of Fitzgerald, and he appeared for me in court, and Weniger would not let him come in to see me and talk to me, but he appeared for me. He advised me to plead not guilty, but I did not take his advice. He was in court when I was fined. The book I had when arrested containing the record of the buys Weniger gave it back to me and when I was going out I tore the pages out and threw it away. It was no good to me. I was not going to be a witness for the government. I took the memorandum down and put it in that book; that was my account; I got sore at the bunch in Mullan. I was sore at Mona McDonald and Babe Kelly.

Q. And you went in there and you said, "Now,

Mona, I am going to turn you in to the Federals and tell them I bought some booze?"

A. I did not tell Mona, I told Needham, the Chief of Police.

Q. I thought you said you told this fellow that you bought from that you were going to tell on them?

A. I did not tell everybody. I was not going to go and talk to everybody.

Q. Which one of those that you bought booze from did you tell before you bought it that you were going to squeal on them?

A. Well, I told Chief Needham, that is the only one I told.

Q. Then you did not tell Mona and you did not tell Babe?

A. No.

I went in there for the purpose of getting these girls to sell me booze. I did not get any money from anybody. The first thing I heard Weniger say was, "I got your Federal stool pigeon over here, gentlemen, is he a Federal man or what is he?" He said, "I wish you would keep out of my county, I can look after my county better without your help." That is all I remember. I was brought here as a witness and have not gone over my testimony with Johnson and Webb. They did not ask me what I heard Weniger say. I did not tell them what I heard Mr. Weniger say. Never told anybody until night before last I told the district attorney after I got here, but at the time I was subpoenaed at Butte to come

here I had never told a soul what I had heard Weniger say.

At the time I was in jail, Weniger told me that if I don't plead guilty and don't give this testimony, he will shove me in Hell, put me over the road to the State prison, but if I plead guilty he will let me out easy with about \$10.00.

I did not tell Weniger that Fitzgerald told me if I would go there and get these bootleggers in Mullan I could make \$1000.00. That is the time we talked about this money that Weniger told me if I plead guilty he will let me out easy with ten dollars.

Q. Then as I understand you, you did not tell Weniger that Fitzgerald had told you that if you would go there and get these bootleggers in Mullan you could make a thousand dollars?

A. Yes, sir, but this was not Fitzgerald's case, this was my own case. I told Weniger that Fitzgerald told me that. He has got the statement of it, too, and that is after I got beaten up inside the jail. I told him that, but it is not true. I had to tell something to get out of my case. Sure I made up the story myself. He made it up and Weniger said, if I would sign that statement he would let me in easy. The county attorney came down and Weniger and a couple of other guys, I forget now what their names are. Weniger told me to tell the attorney and I did not say much, so they took me up to the office and he wrote it up and I just signed it. The county attorney wrote it up without my saying anything that was in it.

Q. You did not tell him a thing from which he could make up a statement?

A. Well, he was saying that that would be all right, "it is up to you." I was sick and I was—?— beat up that time, too." The statement was not signed in the presence of Weniger. They took me up to the attorney's office and he doped it up and then I signed it. The prosecutor and I were alone. I did not tell the prosecuting attorney anything to put in the statement. He got it up himself. I signed it but did not read it. I did not read it all. I don't know what is all in the statement. I know about that thousand dollars; about the thousand dollars about Fitzgerald. He was supposed to give me a thousand dollars about the bootleggers that you stated there, but it was not true.

Q. I want you to tell me what was in the statement that you signed.

A. "I don't know what is all in that statement." As much as I know is only about that thousand dollars that you told a little while ago, that if I got the bootleggers in Mullan, that he would give me a thousand dollars, and that was not true. The prosecuting attorney was Mr. Horning.

MR. NUZUM: (Mr. Horning will please stand up.) Q. Is that the man?

A. Yes sir. That is the man I referred to as the prosecuting attorney with reference to this statement.

CROSS EXAMINATION

BY MR. BANDELIN:

I know a Mrs. Ainsworth. I had some conversation with her. She was running a sporting house. I do not think she told me she wanted me to get Babe Kelly and Mona McDonald. I know it is not a fact.

Q. Well, you had some talk with her, didn't you, in reference to these two women?

A. No, I did not.

Q. And you never mentioned Babe Kelly's name to her?

A. We talked about Babe Kelly.

Q. Didn't she want you to get Babe Kelly?

A. No, nobody told me to get any of them.

The woman I had trouble with was named Barney. I was sore at her because I got a disease from her. I got a drink from Babe Kelly in Mullan at her house in Mullan. I got a drink from Burdella and Babe, too. I cannot tell when I got it, but it was about eight days before they searched the place. Babe was not in there when they searched the place. McKinney was running the place when it was searched. McKinney was running the place for Babe Kelly. I swore to an affidavit for a search warrant; never had any trouble with Bertha Strom. I just got sore at all of the girls.

RE DIRECT

BY MR. LANGROISE:

I came to the United States in July, 1927 from Canada. I am a Canadian. Remained here all of the time since July, 1927. Before coming to the United States I worked in smelters and mines and on farms, at various labor. It was after I got a disease I came down to Johnson and Webb and after I had talked with Needham. Nobody paid me any money for making purchases. When I was placed in jail by Weniger McKinney was there. McKinney who was caught the night before on the search warrant and quite a bunch. They threw blankets over my head and beat me up. They got me in the cell and beat me up. Neither Sheriff Weniger nor any deputy came in there to stop them. There never was any mention—they never asked me why I was beat up, why I had the black eye, or anything at all.

No. 6168

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit 2

R. E. WENIGER AND CHARLES BLOOM,
Appellants,

vs.

UNITED STATES OF AMERICA
Appellee.

Transcript of the Record
VOLUME II

On Appeal from the District Court of the United States
for the District of Idaho, Northern Division

STRAW & CO., INC., PRINTERS, BOISE

Filed
JUN 19 1930

PAUL P. OERICH,

IN THE

United States

Circuit Court of Appeals

For the Ninth Circuit

R. E. WENIGER AND CHARLES BLOOM,

Appellants,

vs.

UNITED STATES OF AMERICA

Appellee.

Transcript of the Record

VOLUME II

On Appeal from the District Court of the United States
for the District of Idaho, Northern Division

JULIUS JOHNSON, a witness on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Julius Johnson; I reside at Coeur d'Alene, Idaho. I am Federal Prohibition Agent; have been for four and a half years. Prior to that time I was Deputy Sheriff of Kootenai County, and Police Officer of this city, of Coeur d'Alene. I had been Deputy Sheriff and Police Officer for five years before becoming Federal Prohibition Agent. I have resided in Kootenai County nine years. I am acquainted with William Barron. In 1928 he came to Coeur d'Alene and gave Mr. Webb and myself information. We afterwards made searches in Mullan with Barron on August 6, 1928 in the evening. We searched the Herman Arbliss place at the Mullan Inn. There was a bunch of men drinking at the bar. I do not know who they were. I found a gallon of sour wine under the bar, and in the ice box I found 53 pints of beer, and in a back room in the rear of a building, 24 more bottles of home brew, and in a cache, a sliding panel under the stairway, five empty gallon jugs, showing traces of moonshine. Sam Webb and Barron were with me at that time. We also searched The Coffee Shop operated by McKinney. We got a bottle of moonshine, found in the icebox, one-half full, and a case of beer under the faucet. We arrested McKinney at that time. We went to Mona McDonald's place—the

Rex rooms, where we found 42 bottles of home brew beer and one bottle in the ice box, and 41 under an old automobile body turned over, just back of the place. She was arrested. William Barron was with us at the time of that search. We had Federal search warrants for each of these places. The parties arrested were put in the county jail of R. E. Weniger. I went to the jail at Wallace on August 7th; saw Weniger. Deputy Sheriff Bloom and Ex-Chief of Police Needham and Webb and Weniger were in the room when I first went there.

Q. What did Weniger say to you at the time you came in there?

A. I rapped on the door and he opened the door and he says, "I got your God Damn stool pigeon in here—what is he, a Federal man or a stool pigeon? I says he is neither, that he is an ex-police officer from Mullan. He says, "Well, we got him for hitting a woman out on the street and knocking her down."

Q. Was there any other conversation at that time between Webb and Weniger?

A. Mr. Needham at that time spoke up and says, "He hit a woman," and Webb spoke to Needham—told him he thought he would have all he could to take care of his own town without coming to Wallace trying to police that town, and at that time Weniger—Weniger told Webb, "Webb", he says, "we can run this county up here without your help, without the help of the Federals", and then they got into quite an argument for a few seconds.

Q. During the time you were on that trip did you see Barron?

A. I did.

Q. Where?

A. In the office.

Q. The Sheriff's office?

A. Yes. Not the office, the jail office.

Q. Now, Mr. Johnson, you went to work for the Government when?

A. On October 5th, 1925. The first two years I was in Montana up until the spring of 1927. I went to Wallace in the spring of 1927 and remained there about three months. Went to Coeur d'Alene and been stationed there ever since except when I was transferred to Salt Lake, from December 26, 1927 until April 4, 1928. During the time I have been stationed in Northern Idaho I have had Shoshone, Kootenai, Benewah, Bonner counties. Webb, Federal Agent, was in this territory and Heffer was here for a little while. Heffer went to Boise. I know Louis Trikla. I had occasion to search his place. Since my employment by the government I have made my reports as soon as I got back to the office. They are sent to the Prohibition Office at Boise. I had occasion to search the place of Herman Arbliss on August 6th, 1928. He was running the Mullan Inn in Mullan, Idaho. That is the search I referred to a few moments ago. I know Charlie Fond. I had occasion to search his place in 1929.

MR. NUZUM: It is the contention of the defendants Weniger and Bloom that none of the testimony of

these witnesses in regard to searches or investigation, or the results of searches, is admissible as against them. I don't want to be interrupting. May it be understood that that goes as to any defendants on trial?

THE COURT: I do not want to broaden out the ruling too much, Mr. Nuzum. The objection to this question will be overruled.

A. I do not remember the date.

Q. Do you have a way of refreshing your recollection with respect to the date of the search?

A. I have my sheet reports.

(Witness examines reports and states, after looking at it that he can state independent of the document what the date is.)

A. It was April 23rd. We found in the basement of the Bilberg Hotel a locker on the inside of a coat pocket, an old coat, one pint of moonshine, about one-half full, and under the locker, on a small shelf, one pint full of moonshine. That was in the year 1929. Webb was with me.

Q. Are you acquainted with Blacky Coughlin?

A. I am.

Q. And one of the defendants here, if you know?

A. Yes.

Q. Have you had occasion to make a search of any place operated by him?

A. Yes.

Q. When was that search made?

MR. NUZUM. Objected to as incompetent, irrele-

vant and immaterial, on behalf of defendants Weniger and Bloom.

THE COURT: Overruled.

A. The search was made February 11, 1929. Webb was with me and there we found three gallons of moonshine, two quarts of moonshine, one bottle partly full of Canadian Whisky, and three bottles of beer. This was found under the bar. Coughlin was present at the time I found it, at the Bolo Bar, Mullan, Idaho.

Q. Did you have occasion to search any place operated by the defendant Mike Kennedy?

A. I did.

Q. Did you have occasion to make a search there in the year 1929?

A. I did.

Q. Who was with you?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

A. I was alone.

Q. What did you find?

A. I purchased one drink of whisky from Mike Kennedy and placed him under arrest. I searched and found one quart of Canadian Whisky and six cases of beer, and one gallon jug of moonshine, about two-thirds full.

Q. Do you remember the date of that?

A. October 17th.

Q. October or September?

A. September.

Q. Did you have occasion to search the Rockford bar during this year?

A. Yes.

Q. Who if any one did you find at the Rockford bar at that time?

A. Waino Pikkerainen.

Q. Who was with you at the time of the search?

A. Webb.

Q. Do you remember the date—the approximate date of it?

A. February—I wouldn't be positive—1929.

Q. What if anything did you find at the Rockford bar?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

A. Webb and myself went into the place known as the Rockford bar at Mullan, and Pikkerainen was in front of the bar, and was doing some repair work around the stove. I served the search warrant on Pikkerainen, and Webb went down along the bar in order to get behind it. Pikkerainen took the search warrant and jumped up on the bar and knocked a pitcher into the sink, as Webb went around and got the pitcher and

saved a small amount of the moonshine that was left in the pitcher. We went back into a garage a few feet back from his place, and found 12 pint bottles of moonshine, seven and a half pints of moonshine, 2 gallon jugs, partly full of moonshine, and ten gallons of moonshine in a keg, 27 quarts of assorted Canadian Bonded Whisky, and about 224 bottles of beer.

Q. Did you have occasion this year, during the latter part of this year, have occasion to make a search of the Miners' Club at Mullan?

A. I did. I believe it was in October, along in the fall. John Thompson, one of the defendants here, was there. Webb was with me. Myself and Webb walked into the place, walked through the swinging doors, and there was one man at the bar drinking beer. I says to Thompson, "Give us a bottle of beer." Thompson went—

MR. NUZUM: I want to interpose the same objection, incompetent, irrelevant and immaterial, on behalf of Weniger and Bloom.

THE COURT: Overruled.

A (Continuing) Thompson went to the ice box and returned with two bottles of beer. He gave Webb one, and Webb laid a dollar on the bar, and Thompson rang fifty cents up in the cash register and gave him fifty cents back in change. We searched the place and found five more bottles of beer in the ice box, and arrested Thompson.

Q. Did you have occasion during 1927 to search any

place operated by the defendant Walter Johnson here?

A. I did.

A. What place was that?

A. The Mullan Rooming House, June 22nd, 1927.

Q. And who was with you, if anyone, on that occasion?

A. Webb and Heffer.

Q. What did you find?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of the defendants Weniger and Bloom.

THE COURT: Overruled.

A. We found one bottle of Gordon Gin, one bottle of Canadian whisky, and there was a well beaten trail to the rear of the Mullan Rooming House, up through the brush, and behind a log covered over with bark, and so forth, we found 400 bottles of home brew beer.

Q. Did you have occasion to search the Hunter Hotel in Mullan, Idaho during the year 1928?

A. I did. Leo Aro was there at the time of the search. It must have been before Christmas. I couldn't swear to it.

Q. I will ask you if there is anything which you can refer to to refresh your memory so that you can give to the court and jury the date of that search?

A. I can. The sheet reports. The sheet reports we make and send to the Prohibition Office. I remember it now, after I get thinking about it.

Q. What was the date of that search?

MR. BANDELIN: Just a moment. Leo Aro is not on trial. He has never been apprehended.

MR. LANGROISE: Our position is just this with respect to this, the Hunter hotel is one of the places paying \$25.00 a month to city. The question is whether or not this evidence is admissible as showing the occupation of these places.

THE COURT: Overruled.

MR. NUZUM: The same objections on behalf of defendants Weniger and Bloom.

THE COURT: Overruled.

Q. What did you find if anything?

A. We stopped the car below the place, quite a ways, I remember, in the evening. We come along the sidewalk, and we heard a lot of noise, people talking. I made a rush, run through the front door, and as I got to the bar, four different men were drinking hot drinks on the bar, moonshine, water and sugar. I grabbed one glass in my hand, and jumped over the bar, I arrested Leo Aro, and under the bar I found a half gallon jug, about one-half full of moonshine, and I believe 18 bottles of home brew beer.

Q. I will ask you if you had occasion to search the Miners' Club during the year 1927?

A. I did. I can't recall the date. I have these reports to refresh my recollection with respect to date of that. (Witness examines reports.)

Q. Are you now able to say the date of that search?

A. Yes.

Q. You have recalled it?

A. Yes.

Q. What is the date?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial on behalf of Weniger and Bloom.

THE COURT: Overruled.

A. June 29, 1928.

Q. 1927?

A. Yes, 1927. We found Trikla there. Heffer and Webb were with me at the time of that search.

Q. What did you find?

MR. POTTS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. We served a search warrant on Trikla, and searched the place, and found no liquor inside the place, but at the back door, just outside the building, four feet away, we found a pint bottle under a rug, containing moonshine, and then on the bar, back of the bar, we found a loose leaf ledger of some kind, where they kept their charge accounts on.

Q. Did you have occasion to search the Hunter Hotel bar during the Fall of this year, 1929?

A. I did. Webb was with me on that search.

Q. Do you remember that date?

A. No, I don't.

Q. What did you find there, if anything?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial, on behalf of Weniger and Bloom.

THE COURT: What place is this?

MR. LANGROISE: The Hunter Hotel.

THE COURT: Overruled.

A. Myself and Webb went to this said place, and Eli Sauro was standing in front of the partition which was across the bar. As we run up the steps he started for the bar. There is a small gate going behind the bar, and I saw him as he run ahead of me, dump a pitcher into the sink. Webb went around in front of the bar, I followed Sauro. He run out through the rear door, and I caught him out of the rear door, and brought him back. We saved a small amount of moonshine in this pitcher. There was a drunken man sleeping on the table, with his arms in front of him, and also a glass of whiskey sitting in front of him.

THE COURT: We will take the jury to the jury room. (Jury taken to Jury Room.)

MR. NUZUM: On examination of Mr. McGill the other day, I think I must have nodded or something—at least it escaped my attention. The question was asked which I think shouldn't have been permitted to

go without objection. It reads this way from the transcript:

“Question: Heretofore have you had occasion to tell your story in substance to Mr. Wernette and Mr. Bandelin, counsel for the defendants here?”

“Answer: Yes, they are both friends of mine.

“Question: That was some time ago, or recently?”

“Answer: Sir?”

“Question: That was some time ago?”

“Answer: That was before—even before the Grand Jury.” I move to strike that as incompetent, irrelevant and immaterial. I do not think, your Honor, it is proper for witnesses testifying by showing that he told the attorneys for some of the defendants that story.

THE COURT: It comes too late. We can't, several days after a witness has been on the stand, pass upon his testimony in the absence of the setting at the time it occurred, and the conditions as they existed at the time. The motion will be denied.

Q. Mr. Johnson, in regard to the Miners Club the times you have been in there to search, calling your attention to the first time, what stock of goods by way of soft drinks in there did you find in this place?

A. Well, it was pop and a few bottles of ginger ale. I did not count them but there would maybe a case and sometimes two; a few cartons of cigarettes. The first time I went there there was some cigars and a little tobacco; no other merchandise. The Miners Club, as you enter from Earl Street and on the right as you go

in there is a show case with some cigarettes in it, and and then there is a long bar, and then going a ways there is a partition across the bar with a swing door, and to the rear of that partition the bar extends back for another six or eight or nine feet, and it is an old time saloon bar and back bar, and ice-box or refrigerator sitting on the end of the back bar, at the end at the back bar.

I have had occasion to examine the Rockford Cigar Store. I found a few cartons of cigarettes and a few bottles of soft drinks, three or four boxes of cigars; no other merchandise. The arrangement of the Rockford Cigar Store is this: You enter from Second Street on the right hand side as you come through the door is the showcase with cigarettes in it and cigars; you go through a swinging door, you get up to the bar in the barroom. The bar and the back bar is the old time saloon fixtures; a small room on the left that had a bed in it at that time. Then there is the back room, a side room, it is off to the left as you went outside.

I have been in the Central Hotel Bar. The merchandise there was about the same, a few cartons of cigarettes, a few boxes of cigars and a little tobacco, in the line of canned tobacco. The arrangement of the Central Hotel Bar was the old time saloon fixtures, a partition across with a swinging door and the bar behind it; showcase in front and the cigars.

I have been in the Bilberg Bar. The merchandise there was cigars and cigarettes and a little tobacco; a few bottles of soft drinks. The arrangement with refer-

ence to the few bottles of soft drinks I refer to, the variety, they would generally be pop and ginger ale. Most of the places had some near beer bottles. The fixtures and arrangement of the fixtures at the Bilberg Bar was this: You enter from Earl Street, that entrance, and there is also an entrance from Third Avenue. From Earl Street you go through somewhat of a hotel lobby and then you get into the bar room. The bar was on the right hand side, an old time saloon bar and an old time back bar, and there were card tables in front of the bar sitting around the room, and then to the rear, the back end of the building, there were card rooms and different booths fixed up in blocks from the bar, and you opened the door to get into the back room where all these bottles were.

At the Hunter Hotel Bar the merchandise carried there was cigarettes and a few cigars and soft drinks and a few cans of tobacco. The arrangement of the fixtures in this place was this: You enter and the showcase is on your left where the cigarettes are kept, and then you go through a swinging door and you get up to the bar, an old time bar, saloon bar and back bar.

The Mullan Inn merchandise was about the same. There were a few cartons of cigarettes, a little can of tobacco and matches, soft drinks; that was about the extent of it. The arrangement of the fixtures there was: You entered off from Hunter Street, walk in, and then there was a showcase, then you went through swinging doors and up to the bar. There was the old time bar and

back bar and a table in there, a card table, and then a bedroom to the rear.

I have been in the Bolo, in Mullan. As to the merchandise carried there, the Bolo in the front end had a pretty complete stock of cigars, that is, the cigar store and cigar fixtures on the wall and counters, quite a stock of cigars and tobacco and soft drinks in the front. Then you went on through, you got into the card room, a table, there was several card tables, then you continued and you went through another door and down a couple or three steps and you got into the barroom. The fixtures was arranged like this: It was an arrow shaped bar, home made bar, and shelving, if I recall correctly, on the back on the wall where they have things sitting on. I recall the cash register and glasses and bottles sitting on there and that is about all I can recall.

I have been in the Coffee House. The merchandise handled there was about the same, a few packages of cigarettes and a little tobacco, soft drinks. The arrangement of the fixtures there, I recall there was a bar in there, but I would not say about the back bar. I was in there just the one time; living quarters in the rear.

I have been in Mike Kennedy's popcorn stand. The merchandise handled in his place at the time I was there: You come in, it is a very small building, narrow, and as you walk in there was a popcorn machine and a few cigarettes and some pop. The pop was in the rear room, though. I did not notice any in the front room. The machine takes up practically all of the space in the

front room. And a few shelving on the wall where he has some cigarettes and tobacco and then you go through an open-door room with a curtain in, and you get into the rear room, and there is where they had the cash register and table and some chairs, and then continue on back, there is another lean-to or shed where I found the beer and whiskey. The drinks were served in the center room.

I know Mr. Rodgers, a special investigator of the Government. I had a conversation with Weniger shortly after Rodgers had been uncovered in Shoshone County. We were at the jail in Shoshone County, Mr. Webb, Weniger and myself were there. Weniger told me there had been a lot of bad checks floating around town, and that he got suspicious of a car, a Chrysler car being driven with a Washington license on it, and that he went to him about the license and that he took him then up to the court house and there he established his identity. He says that Rodgers had his credentials from the department — Treasury Department; established his identity as a Federal man.

August 14, 1929 we made a number of raids through the country. After those raids at that time I had a conversation with the defendant, R. E. Weniger. It was between the Commissioner's office and the county jail. I don't recall who was present. I know Weniger and I were in the conversation. The first thing Mr. Weniger wanted to know if Glen Stowe was a Federal Officer and referring to Glen Stowe, a deputy sheriff of this county. I told him that he was not. He says, "Well,

what business has he got up in this county?" And I told him that he was with us to help make these raids, and he then said if Sheriff McDonald wanted to police that county up there he would turn it over to him. He said that he and Charley Summerfield seemed to want to run this county.

Q. Was R. E. Weniger or any of his deputies assisting any of the Federal Officers in the conducting of these raids?

MR. NUZUM: Objected to as incompetent, irrelevant and immaterial whether they were or not.

THE COURT: The objection is overruled.

A. They were not.

MR. LANGROISE: Was Stowe and Summerfield helping you?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. Summerfield was not. Stowe and Holmes, the two deputies from this county, were.

I did not have occasion to go to Shoshone County and talk with the Sheriff with respect to our work and his assisting me until two years after I had been appointed at the time when my post of duty was moved to Wallace. That was in 1927.

Q. I will ask you whether or not you asked him for any help.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. Just give us the conversation at the time that you first talked to him.

MR. NUZUM: I object as incompetent, irrelevant and immaterial on behalf of Weniger and Bloom.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. Go ahead, Mr. Johnson.

A. I told Mr. Weniger that I was going to be stationed there, and also asked him if there would be any chance to get a little help if a fellow needed it. and he told me that he had all he could handle without doing anything with the prohibition, and that his men, referring to his deputies, was under bond, that if they would go out with us fellows we might shoot somebody and he would get in trouble over it.

Q. Now, has Sheriff Weniger at any time from that time on given any assistance in the apprehension or the gathering of evidence against violators of the liquor laws in Shoshone County to you?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: You mean this witness?

MR. LANGROISE: This witness, yes.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. He has not given me any.

CROSS EXAMINATION

BY MR. NUZUM:

I was in the Mullan District in the summer of 1927. I cannot tell you what time I lived in Wallace. I know it was in the summer of 1927. I could not recall the month. I would not say whether I was living in Wallace when we made the arrests in Mullan in 1927. I cannot recall the dates. I went to Mullan after I lived in Wallace in 1927. Could not tell you when I moved to Wallace. I have not the papers here so I could refresh my recollection. I could find it but it would take some time to look at my reports. I went to Mullan when I lived in Wallace. I went up there and around the country and through the town and all over the county. It might have been once a week and then it might be a long time between. My business in Wallace when I was in Wallace was the enforcement of the prohibition law. I do no other business and I could have gone to Mullan at any time. It is nine miles from Wallace on a paved road.

Q. Now, you learned from this fellow Needham in June, 1927, of his collecting licenses on these pool halls, didn't you?

A. I did not.

Q. Why, didn't he tell you in June, 1927 when you made these raids that he was making these collections?

A. He did not.

Q. Where is Exhibit No. 1? Didn't he show you this Exhibit No. 1 when you made the raids in June, 1927 and tell you just what he was doing?

A. He did not.

Q. Didn't he offer to take you around to these various houses of prostitution and bootleg joints and gambling houses and show you that they were selling booze in June, 1927?

A. He did not.

Q. When did he first tell you that?

A. He told me the last term of the Federal Court in this building after the Prosecuting Attorney's force left for Boise.

Q. You mean the term before this?

A. Yes sir, the May term.

Q. May, 1929, that is the first time he ever told you that?

A. The first time he ever spoke to me about this.

Q. You cannot be mistaken about that. Mr. Johnson?

A. I am not mistaken about that.

With reference to the witness Barron, when I came in there Weniger told me he had arrested a fellow for knocking a woman down. He asked me whether or not he was a Federal Agent or a stool pigeon I was using, and I told him he was not working for us. Then Need-

ham spoke up and said that the fellow did knock the woman down. Then Webb spoke up and said to Needham that I should think you would have enough to do up at Mullan without coming to Wallace.”

Q. And then it was that Weniger turned to you men and said—that is, turned to Mr. Webb and said that he, Weniger, felt he could run the things in this county also, didn't he?

A. Yes sir.

Q. And that was with reference to this fellow that he had arrested and that is what the talk was about?

A. That is what we were talking about.

Q. Yes, sir, and you understood it that way, didn't you, Mr. Johnson, just a few words—that was caused by Needham and Webb in the first place.

A. Well, they are the ones that got in the argument.

Q. They got in the argument and then I don't suppose that you cut in but Weniger did.

A. Yes sir.

With reference to Rodgers, all I know is what the Sheriff told me, that he discovered Rodgers was a Federal Agent. Weniger told me that he first uncovered him, that he found out who he was, and that there were some bad checks floating around; that the Chrysler car had a Washington license on that was issued for a Ford car; that he was using a license on his car that was not issued for that car.

Q. And he called those men up there after he had investigated and saw that there was something wrong

with the car, to see whether or not they were the ones who had issued the checks?

A. Well, of course I would not know what he called them up but that is his conversation.

Q. That is his conversation with you?

A. Yes sir.

Q. Did he tell you that he had made a request of the county commissioners to include in the budget enough money to provide him with two men to do dry squad work, and that they refused it?

A. He told me that, but I would not say that was at that time.

Q. He has told you that?

A. Yes sir.

Q. And he told you that with the small force that he had he could not lend you any assistance without they did give him more deputies?

A. He did not say it in them words.

Q. Well, in substance then?

A. I know he said he had a lot of civil work to be done in that county and a few men to do it with.

Q. Any you know at some time he told you that they had refused to give him these men to work on the liquor law?

A. He told me that one time that he went before the commissioners to get, I believe he said, about a thousand dollars.

Q. Enough to hire somebody to work on the liquor law, and they refused to include it in the budget?

A. He told me that at some time or another.

Q. And I don't suppose you know whether those officers up there in this state operate under our system where the budget provides for all salaries?

A. I know we do in this county.

He might have told me that for the whole county and for his full force he had but one automobile provided by the county, but I do not think he did at this conversation.

CROSS EXAMINATION

BY MR. BANDELIN:

McKinney and his wife were operating the Coffee Shop on August 6, 1928. I did not see Babe Kelly around there. I did not know her until I saw the Marshal pick them up at Mullan.

Q. Babe Kelly, stand up. You would not say that you saw her in that coffee shop at any time around the sixth day of August, 1928, would you?

A. No, I did not see her.

I did not arrest Babe Kelly nor did Webb. I know that McKinney entered a plea of guilty with reference to the matter of the search at that time. At Mona McDonald's we found one bottle in the ice box and forty-one outside under an old car turned over. I know she came down here and plead guilty, received a sentence of both a fine and jail. I have seen here in other places. I saw her in the Coffee Shop, across the street

from this one. She was in there operating it. She was not violating any law and I made no attempt to arrest her. In Mike Kennedy's I bought a drink and made a search. Mike Kennedy came down and entered a plea of guilty and is serving his sentence. In the Mullan Road House Walter Johnson was the man there. The Mullan Road House is located about half a mile east of Mullan. He has paid his fine for possession of liquor. I believe Gus Aro was the man at the Hunter Hotel Bar. It was not Leo. It was Gus. They look so much alike, it is hard to tell and I would not swear that Gus Aro is the man. The man I arrested is the man Leo. He came into court, plead guilty and served his fine.

CROSS EXAMINATION

BY MR. WERNETTE:

On February 7, 1929 we raided the place where Pikerainen was working; found some liquor in a pitcher. He plead guilty and served his sentence. With reference to Coughlin, he plead guilty and is serving his time.

CROSS EXAMINATION

BY MR. REED:

I found Herman Arbliss in the Mullan Inn. He plead guilty and served his time. I went to the Bilberg

Hotel April 23rd, 1929. Down in the basement in a locker I found two bottles. One was in an old coat hanging up and the other was under a step. Webb was with me when we found it. When we went in Fond was behind the bar. He did not go to the basement with us. I went down in the basement and came back up and Webb was talking to Fond and Fond told him to go ahead and search. We searched may be an hour or an hour and a half. We did not find any liquor behind the bar although we looked for it, and Fond told us we were at liberty to search the place. Webb found the first half pint. After he got that I took out the mops and brooms and old dust rag and under that is where I found this other pint under this step or shelf.

Q. And did the dust rags look as though they might have been there for some time?

A. I could not say as to that. Some of them looked as though they might have been around there for a long while, and some looked as though they had been used right along.

We did not search anything above the ground floor.

CROSS EXAMINATION

BY MR. POTTS:

I resided in Wallace about two months in 1927. I came from Kalispell, Montana to Wallace. I left for Salt Lake the day after Christmas and stayed four months and came back and stayed a few days and went

to Southern Idaho and then to Montana. I was first in Mullan in June, 1927. I did not make any raids in Mullan until after I came back to Idaho; made a series in June, 1927. Do not remember when I made the other raids. We made raids whenever we got a chance and thought we could get in. When I made these raids I was looking for whiskey, gin and beer, and directed my attention to find those. I did not make a practice of counting the number of soft drink bottles. I am positive that Needham never gave me any list of places that were violating the liquor laws or anything of that kind. He did not at the term of Federal Court in November or December a year ago. The first time he spoke to me about it was the last term of court, 1929; he gave me the information. I never did talk over conditions in Mullan with Needham in 1927. Mullan is on the Yellowstone Trail, and you could get to Mullan either by going from Wallace up the canyon toward Montana, or by coming from Montana down the canyon to Mullan. Mullan is on a paved highway from Wallace, about nine miles. From Coeur d'Alene to Mullan it is sixty-nine miles. The greater part of the road is paved or oiled; all good road and you could go there in about two and a half hours in the absence of snow or slippery weather. When we made the raids we made Coeur d'Alene our base, if we drove a car; we drove right through to Mullan from Coeur d'Alene.

RE-DIRECT EXAMINATION

BY MR. LANGROISE:

When we made these raids in Mullan we sometimes found whiskey or other intoxicating liquors, sometimes we would not. I have gone there in the day time; usually went late in the evening.

Q. During the time you were making any raids, what occurred with respect to anything you did?

MR. NUZUM: I object to that. I think that is too general.

THE COURT: I think not. He is trying not to make it leading and has directed the witness's attention to what he has in mind.

A. I have had the phone ring several time in different places and tell us to get out of there, that the Federals were coming. I would answer the phone myself during the time I was searching the place. When I was in Wallace I was working in other counties than Shoshone. The territory extended from the Canadian Border to the lower end of Benewah County. I had to pass through Cataldo, Kellogg and Wallace to get to Mullan, from Coeur d'Alene.

RE-CROSS EXAMINATION

BY MR. POTTS:

During this period there were other prohibition agents in this territory. Sam Webb was on the job all of the time and Heffer part of the time, and no others.

RE-CROSS EXAMINATION

BY MR. NUZUM:

I received communications through the telephone from somebody to look out for the Federals, at one specific time, in Mullan, at the Mullan Inn. That was in October, 1929.

Q. And then in all the other raids you made in Mullan you never had any experience of this kind?

A. I can't recall any other places right now.

Q. There is one other question I want to ask you, Mr. McGill told you and Johnson, didn't he, that he had been running a booze joint, selling moonshine, beer and wine, from October until December, 1928, and that you told him you had nothing on him?

A. No.

Q. Did you make a complaint against him?

A. I do not believe I ever told him I didn't have anything on him.

Q. Didn't you say to him, "McGill, that may be all true, but we haven't got anything on you, nobody has complained?"

A. I made out reports of everything I told McGill.

Q. Didn't you tell McGill that nobody had complained, and therefore he could go his way?

A. I didn't.

Q. Nothing of that kind occurred, did it, Mr. Johnson?

A. Not in that language.

Q. You didn't arrest him after you had that conversation?

A. I can't make an arrest unless I see a crime committed in my presence. I made out my report. I could swear out a warrant before the Commissioner, but I didn't; I could have the Marshal serve it but I did not swear out a warrant. That is up to the Prosecuting Attorney if he has a case and wants to prosecute it.

Q. Evidently the Prosecutor, from your statement, did not think he had a case against McGill?

MR. LANGROISE: Now I object to that—

THE COURT: Sustained.

RE-DIRECT EXAMINATION

BY MR. LANGROISE:

Q. You did report that matter to our office?

A. I did.

Q. Did you yourself know of the investigation that has been going on in Shoshone County for some time?

A. Yes.

SAM WEBB, a witness called on behalf of the Government, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Sam Webb. I reside at Coeur d'Alene;

am Federal Prohibition Agent; have been since July 5, 1925. Before that was Deputy Sheriff for two and a half years. Before that was in the Army. I have been stationed at Coeur d'Alene since a year ago last May. Before that was at Sandpoint. The territory covered by me was Bonner, Boundary, Kootenai, Benewah and Shoshone Counties. I know William Barron. He came to Coeur d'Alene to talk with Julius Johnson and myself about conditions at Mullan. Afterwards, Barron, Johnson and myself went to Mullan and made some searches August 6, 1928 in the evening. We searched Herman Arbliss's place in Mullan, known as the Mullan Inn, and the Mona McDonald place, known as the Coffee Shop, the McKenney Place. Johnson, Foster and Barron were with me.

Q. What did you find, if anything, at the Mullan Inn?

MR. NUZUM: On behalf of defendants Weniger and Bloom I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. We found in the neighborhood of 50 bottles of beer, a number of jugs containing a small amount of moonshine whiskey, funnel, liquor glasses, and so forth.

Q. Now what if anything was found at the Mona McDonald place?

MR. BANDELIN: He has already gone into that, and it is repetition.

THE COURT: Overruled.

MR. NUZUM: Weniger and Bloom make the same objection, incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. 42 bottles of beer.

I was in Wallace on the following morning, August 7, 1928 and went to the Sheriff's office, R. E. Weniger's office. Julius Johnson went with me. We saw Sheriff Weniger, Deputy Sheriff Bloom and Mr. Needham, Chief of Police of Mullan. When we went in Weniger's first remark was, "We got your God Damn stool pigeon in jail for knocking a woman down on the street out here", and he wanted to know if he was a Federal man or an ordinary stool pigeon. Mr. Johnson told him that he wasn't any stool pigeon, that he had volunteered some information and that we had acted upon it, and that was most of the conversation as I remember it. Then the following conversation took place with respect to the operation or the handling of the county. That conversation followed a short conversation that I had with Mr. Needham. Mr. Needham butted in in a way and says, "We just seen this fellow knock a Mullan woman down on the street." In answer to that I said to Mr. Needham, that it seems to me that you would do well if you kept your own town in good shape, instead of coming down here, jumping on-to somebody that is assisting us, and then the Sheriff told me that he could run his county without our help, and then there was some quarrelling between him and

I and that was passed over.

I first met Weniger near the end of 1924 on my first visit to Shoshone County, at his office.

Q. Did you at that time talk with him, or did he talk with you about any help to be given in the enforcement of the liquor laws in that county?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. We did have a conversation along that line.

Q. Give that to the Court and Jury as best you can.

MR. NUZUM: Same objection.

THE COURT: Overruled.

I had a conversation with him along that line.

THE COURT: Relate, as nearly as you are able to what you said to him and what he said to you, and don't characterize it. Just state what happened.

He told me that he had been elected by the wet element of the county, and he didn't choose to do any work along the enforcement line, and for that reason he wouldn't take any part in our work, or give us any assistance. On August 14th, 1929 I went with other officers to make raids in Shoshone County, and immediately following these raids I had a conversation with Weniger in front of the court house in Wallace, Idaho. He said, "the first remark by the Sheriff, as I remem-

ber it, was that he asked me why we didn't move to Wallace and make christians out of all the persons living there, or words to that effect, and he told me also that he wanted to get into this court, that if he was brought into court he would go somewhere in the East. I do not recall the name of the town, and was going to secure the services of Clarence Darrow to defend him. Also he told me that he was going back to Washington to see if he couldn't—if the Democrats couldn't talk to Senator Borah.

Q. About what?

A. About the Federal Court in Coeur d'Alene.

I knew the Yellowstone Bar in 1927. I searched the place. John Jaskara was operating it. We found a pint of moonshine and a gallon of wine.

Q. Did you during the month of June have occasion to make a search of the Mullan Inn in Mullan?

THE COURT: Are you going into all the transactions that were covered previously?

MR. LANGROISE: I am trying not to, Your Honor, that would be too repetitious. I am trying to cover the searches that this witness made independent of Mr. Johnson.

THE COURT: Very well, I thought you might shorten it considerably.

MR. NUZUM: I object to any searches — with reference to any searches on behalf of defendant Weniger and Bloom. That will be the same objection to all

of this. I do not think the Court will be misled.

THE COURT: I prefer not to have the objections too general.

MR. NUZUM: All right.

THE COURT: The District Attorney may change the line of his questions and may ask something that would be objectionable.

Q. Who was in the place at that time?

A. Herman Arbliss; that was in June, 1927. I am mistaken; it was John Rantella. At that time John Rantella dumped a pitcher of moonshine, part of which was retained as evidence. We found seven bottles of beer in a sink, and 100 bottles of beer in the rear room.

Q. Did you have occasion in September 1925, to search the Miner's Pool Hall?

A. I did.

Q. Do you recall now who was in there at the time?

A. I do.

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. A. Ansoli was there. We found a pitcher of moonshine and a gallon jug of moonshine back of the bar.

CROSS EXAMINATION

BY MR. NUZUM:

Weniger, Bloom and the Chief of Police of Mullan

and myself were in the office when Weniger said he had arrested somebody for slugging a woman. Johnson was also there. Weniger said, "We got your God Damn stool pigeon in jail." I am positive of that. Weniger said that this stool pigeon had knocked a woman down here on the street; that Barron had. The remarks were all continuous; there were no periods or commas. Needham then said this man had knocked a woman down. I resented Needham saying that because I did not think it was any of his business.

Q. You didn't think it was anybody's business, if you saw a great big man knock a woman down, to say anything about it?

A. No, as long as the Sheriff and his Deputy was there.

Q. You thought he could keep absolutely still and make no observations when he saw a man assault a woman?

A. I spoke my thoughts to him at that time. I thought he could keep busy in the city of Mullan as long as they were operating a Chief of Police without assisting us in our work in the town of Wallace.

Q. Now, didn't you say that you thought he could, on your direct testimony, thought he could attend to his business in Mullan without interfering with the man that was assisting you—isn't that your direct testimony?

A. I do not think so.

Q. Do you remember what you said?

A. Pretty well.

Q. What were you objecting to if he wasn't interfering with or had arrested a man assisting you—so far as Needham was concerned what were you objecting to?

A. My main objection was interfering with our work.

Did it interfere with your work if one of your men assaulted a woman and knocked her down on the street for the officers to arrest him?

A. No, I wasn't objecting to the right of the officer to arrest him.

Needham told me he saw the man knock her down and I thought Needham should attend to his own business, and it was then that Weniger said to me, "I will attend to business in my county." That was a part of his answer, and without help, he said. The only reason for the conversation was the arresting of the man that we were talking about.

Referring to Weniger's conversation about being elected by the wet element, I had two conversations with him. I did not make any request of him. There was some talk about his assisting us. Mr. Heffer introduced me to the Sheriff as Prohibition Agent, and I talked to him along the lines of efficiency, and told him that I would be established in this district and would be glad to cooperate with him in any way we could. That is when the conversation came up that he wasn't doing anything along that line—his office wasn't doing any-

thing along the line of investigating liquor.

Q. What liquor law?

A. I presume he had reference to the State liquor law. I had reference to the Federal law.

Q. You never did make a direct request of Weniger to help you in any Prohibition case?

A. I never did.

“Weniger never said anything about being handicapped for lack of funds nor did he state that he had requested the County Commissioners to include in the budget enough to give him two officers to enforce the prohibition act.”

I know the deputies he had in Wallace. He has two in the office. Bloom lives in Mullan and is the jailer. Glayhee is the office man. It was the 29th of August, 1929, that he suggested that I had better move to Wallace and “Make Christians out of all of us”, I believe he said.

Q. Did he suggest you as the agency to bring about this metamorphosis?

A. In fact I remember it was like I told you.

Then he said he was going to get Clarence Darrow; that is, to see if the Democrats would talk to Borah.

Q. Was that before or after this little Democratic-Progressive-Republican coalition at Washington?

A. I don't know anything about that.

CROSS EXAMINATION**BY MR. REED:**

I have been going to Mullan since 1925; was there in 1926, 1927, 1928. Found Herman Arbliss in Mullan on August 6, 1928 and he plead guilty and served his term.

CROSS EXAMINATION**BY MR. BANDELIN:**

I was in McKinney's place on August 6, 1928 and Barron had preceded me. He bought a glass of beer. McKinney was in charge of the place. I did not see Babe Kelly there. Mona McDonald was arrested August 6, 1928; came down, plead guilty and was sentenced. With reference to the Yellowstone Bar, I arrested John Jaskarra. I think we arrested Gus Aro, a partner of John Jaskarra. It may have been Leo Aro, but I understood it was Gus. I do not think I can be mistaken. (Gus Aro stands up.) I identify him as the man. I did have Leo Aro down, arrested from another place. I did not arrest Gus Aro myself. I never heard of Gus Aro being prosecuted in a Federal Court on any other charge but this. I have made other searches and other arrests in and around Mullan other than those I have testified to.

RE-DIRECT**BY MR. LANGROISE:**

The names of the deputies in Mr. Weniger's office are

Mr. Chapman, stationed at Kellogg, Mr. Bloom, the Mullan deputy and one deputy at Burke and one at Avery. I do not know their names, and two at Wallace. Shoshone County has a population of about 17,000.

RE-CROSS EXAMINATION

BY MR. NUZUM:

I do not know the size of Shoshone County. I do not know how many miles Weniger and his deputies traveled in 1928 or how many processes they served. I do not know about their being busy. The office deputy takes care of all of the books and papers in the office. The jail is in the basement and Bloom is the jailer. I do not think he sleeps there. I have been there at night on a number of occasions when he was not there. The reason I refer to him as the Mullan deputy is because it is my understanding that he lives at Mullan and is stationed at Mullan. That is hearsay on my part. I have often seen him at Mullan and heard him referred to as the Mullan deputy. I will not give any dates when I saw him there. I have seen him there but I would not state how many times. I do not know whereabouts I saw him on the streets of Mullan. I know he was in the hospital for a long period of time, but do not know how long, and I know that he has not been well. I have never worked with any of the deputies, but I have seen quite a bit of them.

F. P. COLLINS, a witness on behalf of the plaintiff testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

I am residing in Pheonix, Arizona at the present time; I am Federal Prohibition Agent; have been in the employ of the United States Government two years the second day of last September. I was in Mullan during March of 1928. Agent Morgan was there with me. I went there on the 5th day of March, 1928; went to the Central Hotel Bar with Morgan; saw Curley Gardner there. I bought one round of four glasses of whiskey from him, paid twenty-five cents per glass for it. I went to the Miners Club. A man by the name of Louis Trikla was tending bar when we first went there. I bought a round of eight drinks of whiskey from this man. We stayed there for some time and one thirty p. m. a fellow by the name of Paddy McNeill came on shift, and I bought one round of six glasses of whiskey and one pint of whiskey. I paid twenty-five cents a drink for the whiskey, and two dollars for the pint. I bought this whiskey over the bar from both McNeill and the same was true of Gardner and the Central Hotel Bar. I went to the Marble Club in Mullan; do not know the bar tender's name; bought a round of ten drinks of whiskey at twenty-five cents per drink over the bar in the bar-room. The name of the man there was Herman Hermiston. I went next to the Bolo Bar; there I found Tubby Wilcox; purchased four bottles of home brew beer, for which I paid twenty-five cents a bottle over the bar. in the barroom. I next went to the Mullan Inn. Joe

Speck was there and I bought eight drinks of whiskey at twenty-five cents a drink, served over the bar. I next went to the Central Hotel Bar; the man there gave his name as Roy Morphy; later he was identified as Roy Appleton; bought four drinks of whiskey and four pint bottles of home brew beer, for which I paid twenty-five cents each; they were served to us over the bar. On the 6th of March, 1929 I was in Mullan in the morning. I went to the Bilberg Hotel Bar; there we found a man by the name of Herbert Anderson in charge of the bar. Agent Morgan bought one pint of whiskey, for which he paid two dollars from Herbert Anderson.

CROSS EXAMINATION

BY MR. WERNETTE:

Joe Speck later entered a plea of guilty to the charge in this court.

CROSS EXAMINATION

BY MR. REED:

Curley Gardner served one drink to me at the Central Hotel Bar, where I bought four and the other drinks were served to Morgan, Gardner and another man. I made a memorandum at the time of the drinks I bought and have that in my possession and refreshed my memory from it since I came to this hearing. After leaving Curley Gardner's I went to the Miners Club.

then to the Marble Club, then to the Bolo Bar, and then to the Mullan Inn and then back to the Central Hotel. That took from 10:45 in the morning until midnight that night. I was drinking at every place. Curley Gardner pleaded guilty to the charge, and that is true with reference to Roy Appleton.

CROSS EXAMINATION

BY MR. BANDELIN:

I have told all the buys I made there and I have been there since. On the 24th of March, 1928 and remained there an hour and one-half or two hours in the forenoon with the deputy U. S. Marshall. The other man was not with me. We were there arresting these defendants.

R. D. MORGAN, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is R. W. Morgan; I reside in the twenty seventh district, Salt Lake City; I am Federal Prohibition Agent; have been in the employ of the United States Government about six years. I was in Mullan on March 5th and visited some of the places there. I went to the Central Bar; saw a man by the name of Gardner there and there were purchases of whiskey made there. I next went to the Miners Bar in Mullan;

I mean the Miners Club; purchased whiskey there from a man named Trikla and other man by the name of McNeil who came on later. I bought around eight drinks of whiskey from Trikla there, paying twenty five cents for each drink. Collins also bought a round of the same amount, paying the same price. At one thirty Tom McNeil came on shift and I bought a round of six drinks from him, paying twenty five cents per drink. Drinks consumed by Collins, myself and bystanders. Collins buys the same and also bought from McNeil one pint bottle of liquor, paying two dollars. The liquor was served to us right over the bar. We went from there to the Marble Club in Mullan; purchased moonshine whiskey there from a man by the name of Hermiston; it was purchased at the bar. We then went to the Bolo Bar, located in Mullan. There was four bottles of home brew beer purchased, Collings paying twenty-five cents a bottle for it from a man by the name of Wilcox. We left the Bolo and about 9:30 went to the Mullan Bar across the street, and there purchased eight drinks of moonshine whiskey; a man by the name of Speck was tending bar there. I also bought from the man Speck one mickey, they call it, of whiskey; that is a very small bottle, half a pint, I presume, for which I paid him one dollar. We then left and went to the Central Bar again, where we met a man who gave his name as Morphy, but who I found out was Appleton, and there we purchased four drinks of liquor, of whiskey, and Collins did the same. at 10:30 on the morning of March 6th we came down-

stairs, we were staying at the Bilberg, and I purchased one pint of liquor from a man by the name of Anderson behind the bar; I understand it was Herbert Anderson.

JOHN D. PILAN, a witness called on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is John D. Pilan; I reside in Seattle; I was living in Coeur d'Alene in 1928; I was in Mullan, Idaho during the month of March, 1928, doing some undercover work there for Mr. Webb and Mr. Johnson. I got into Mullan on March 5th. Agents Collins, Morgan and Kirtz, who was an undercover man, and myself were there together. Kirtz and I went into several places during the day. We were in the Mullan Pool Hall on March 5th; we purchased some drinks of moonshine whiskey there from Joe Speck. We were in the Central Hotel Bar about eleven o'clock that night. Morgan and Collings purchased some liquor in my presence there and I drank some of it. We were in the Bilberg Hotel on March 6th; Kirtz was with me, and Morgan purchased one pint; that was about nine o'clock in the morning. I think Kirtz purchased one round of two drinks of home brew beer in my presence, and I drank it. He purchased those from Herbert Anderson. We were back into the Mullan Pool Hall that same evening on March 5th and purchased three drinks; Kirtz and I

both purchased one round of two drinks of moonshine whiskey from Charles Hartley, for Joe Speck and ourselves.

CROSS EXAMINATION

BY MR. WERNETTE:

I started undercover work in February, 1928 and continued until about the middle of March. I do not know the exact date I commenced or when I quit. I had done undercover work in Coeur d'Alene prior to that time. I had lived in Coeur d'Alene from the first of the year 1928. Prior to February I had never done any undercover work. In Seattle I sold cars; lived in Yakima, buying fruit. I was hired by Webb and Johnson by the day, receiving five dollars a day and expenses. When I bought drinks I got the money back. My compensation did not depend on the success of the operation. Kirtz is my brother-in-law. I worked as undercover man in Coeur d'Alene under Sheriff McDonald. It was along in February I went to work for him; worked for probably a couple of weeks. I met Morgan in the Sheriff's office in February. Two or three days after that I started to work. I met Holland when he and Morgan were together. I do not know how many drinks I had at Mullan. We were in Wallace the night before, or we were in Burke, rather, the night before we went to Mullan, and previous to being at Burke we had worked Kellogg and Wallace. We were at Kellogg three days the first time; I don't know how many days it was

we were in Kellogg before going up to Mullan. There was quite a number of places in Kellogg where I had gotten liquor during the time I was there, probably in the neighborhood of 12 or 15 places. I do not know off-hand how many places we discovered in Wallace. There were three in Burke. I went to Mullan with Morgan and Collins. I did not have any arrangements where we should meet. We got drinks at the first place. We got drinks at the second place. Mr. Kirtz was with me. We got drinks at the third place and nearly every place we were in. We bought a round of drinks from Joe Speck. I do not know whether he drank with us or not. Do not know how many drinks we had before we returned to the place in the evening. Probably ten or twelve; had quite a few drinks that day. We bought as much as 25 or 30 shots during the day and I was sober.

PAUL REED, a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Paul Reed; I reside at Missoula, Montana; am a Federal Prohibition Agent; have been since July, 1926; prior to that time I was deputy sheriff of Kootenai County. I was in Mullan during the month of June, 1927. I entered the Bilberg Hotel there on June 9th; I did not purchase anything at that time; that was a search. I found two suit cases full of beer in the basement. Herbert Anderson was there at that time. I

was there on October 24, 1927 at the Mullan Bar. It was about ten o'clock at night and I drove my car up in front of the place. Collins, one of our agents, was with me, and I went in and bought a drink of whiskey from a man by the name of Charley Hartley over the bar. He got the whiskey from in under the bar. I paid him for it; he put the money in the cash register. I went to the Miners Club in Mullan in August, 1929; was withand Federal Agent Johnson and Deputy Sheriff.....were in the place searching, and helped check over some of the liquor found there. There was quite a lot of homebrew beer and quite a number of jugs of whiskey and part of a pint flask of whiskey. On that day I went to the popcorn stand located in Mullan, where I bought a drink of whiskey from a man by the name of Alexander Skerrett, and when he told me it was twenty five cents I placed him under arrest, and seized eighty five pints of beer, under the floor in a cache, and in another cache under the sink I found a gallon jug full of whiskey and a quart bottle about a third full of whiskey and another gallon jug about a third full of whiskey and also a quart bottle that was being used as a serving bottle under the sink.

No cross examination of witness.

GEORGE HESSER, a witness called on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is George R. Hesser; I am Federal Prohi-

bition Agent for the 19th district; my official post of duty is at Boise, Idaho; been stationed there for a little over a year. I was at one time stationed at Sandpoint with Webb. I left this district in June, 1928. Webb and I covered the north five counties—Benewah, Shoshone, Kootenai, Bonner and Boundary. I searched the Mullan Bar in Mullan, Idaho in July, 1926. Joe Speck and Martin Everett were there. On refreshing my recollection Mose Tapper was there. We found a small amount of whiskey and a pitcher with a small amount of whiskey, behind the bar. Frank Hahn was proprietor of the place and Mose Tapper was tending bar at the time we made the search. At this time we went to the Marble Front. William Wheatley was there. I found behind the bar some whiskey in a pitcher and a quart bottle of whiskey and two gallon jugs of whiskey, four quart bottles of whiskey in the ice box. Two gallon jugs were in a cache in the wall in the back room. Four quart bottles of beer in the icebox and the quart bottle of whiskey on the work bench behind the bar and the pitcher containing a small amount of whiskey behind the bar. We went to the White Front Cigar Store in February, 1926. Pikkerainen was there. There was a small amount of whiskey, behind the bar. On June 9, 1927 I searched the Central Hotel Bar. R. L. Anderson was there. Found a small amount of whiskey in a pitcher behind the bar and a gallon jug in the back room of whiskey. Made a search of the Montana Cigar Store on August 7, 1925. Joe Speck was there; found a pitcher containing whiskey behind the bar and I think

a bottle containing whiskey; whiskey glasses, bottles of White Rock and a quart bottle containing a small amount of whiskey.

CROSS EXAMINATION

BY MR. WERNETTE:

Speck was taken from the Mullan Pool Hall in 1927. He plead guilty and served his sentence. Speck said he was merely working at the bar. The White Front was operated by Frank Hahn and Pikkerainen, I believe. I am not real sure about that. I arrested Pikkerainen and he plead guilty and served his time.

W. A. McGILL, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is W. A. McGill; I am a Federal Prohibition Agent; have been since February 1. I was in Mullan, Idaho during the month of June, 1929. I know Jack Malloy. On the 19th of June Agent Williams and myself bought two drinks of whiskey from Jack Malloy at the Miners Club in Mullan. On the 26th of June we returned and Agent Williams purchased two drinks of whiskey and a pint of whiskey and paid two dollars for the pint and fifty cents for the two drinks, and on the first of July we returned and I purchased a pint and

Williams purchased twelve pints of beer, paid three dollars for the beer. This was in Mullan, Idaho.

CROSS EXAMINATION

BY MR. WERNETTE:

Subsequent to the dates of the purchases Malloy was brought down to this court and sentenced and fined for this specific offense I have testified about.

GEORGE R. HESSER, a witness recalled for cross examination:

BY MR. WERNETTE:

The day we raided the White Front was February 12, 1925 and according to the report Pikkerainen was not there at that time. Somebody else was behind the bar.

H. W. JEWELL, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is H. W. Jewell; I live in Mullan; I am a miner. I work for the Federal Mining Company; I have worked for that company for twenty-one years; I have resided in Mullan six years or better; that is, I live just outside of the city limits. I know Charles Anderson; have seen him at the Rockford Bar in 1929, about six

months ago. I bought a drink of moonshine from him. I know the Bolo Bar in Mullan. It is a place where they gamble with a barroom in the rear of the gambling room. I bought whiskey there in 1928 from Tubby Wilcox. I know Pikkerainen in connection with the Rockford Bar in 1928. I bought whiskey from him then. I know Jack Malloy; bought whiskey from him at the Miners Club in 1929, about three months ago. I know Joe Speck in connection with the Dew Drop Inn; I bought moonshine whiskey from him about three months ago.

CROSS EXAMINATION

BY MR. WERNETTE:

I was not in the employ of the government when I made these purchases. I first told Mr. Ray about it last Friday when I came down here on subpoena. I do not know where they got their information. When I first told Ray he was the first person I ever told and that is true with reference to Joe Speck. I never told anybody in the least about any of this testimony until I told Mr. Ray. I cannot give the definite date that I bought the liquor; it was about three months ago. I do not know whether Speck was running the Dew Drop Inn. I have known Pikkerainen six years and I knew Frank Hahn, and it was during the period he was running the Rockford that I bought the drink from Pikkerainen. I did not tell anybody about that until after I came down here on subpoena. I did not volunteer the information to Mr. Ray. He took me into his office and cross examined me

to find out what I knew. When I was around drinking I did not think about testifying. I knew McGill in Mullan. I never worked with him; saw him working in mines; did not know his name until I came down here.

F. A. SAVAGE, a witness on behalf of the plaintiff, testified.

DIRECT EXAMINATION

BY MR. RAY:

My name is F. A. Savage; I reside in Mullan, Idaho; lived there four years last April. I have a confectionery and insurance and have been Justice of The Peace since sometime in January, 1929. There have been no prohibition cases handled by me as Justice of the Peace. I took out a confectionery license in the Village of Mullan; paid \$6.00 a year. I had a conversation with Mr. Welch in December, 1928. Mr. Welch came to see me in connection with my paying an additional sum to the city on account of the hickey games that the boys were playing in my place, pastime games for hickies, card games, and I told him my games were just small games for pastime, and I was not able to pay this extra money, did not figure that I was in the class of the other places that were paying money to the city for gambling and other things and I refused to pay it. Mr. Harwood came to see me in January, 1929 at my place of business. He said it had been reported that I had refused to pay anything and some of the other fellows that were paying were

dissatisfied and wanted to know about my paying, and I gave him the same answer practically that I gave Mr. Welch. I told him that a man that gave a bribe was just as guilty as the man who accepted it. With reference to the conditions existing in Mullan, I said to Mr. Harwood that it was dangerous, the taking of money from these people selling booze. He remarked to me that he did not think there was any danger inasmuch as the money all went to the city and the councilmen were not getting anything for themselves, and he did not think any jury would ever convict them when they were not getting any benefit directly.

CROSS EXAMINATION

BY MR. POTTS:

I do not remember Welch presenting me with a paper in type written form. He had a paper in his hand. He wanted to know if he could get my name on the list and suggested \$35.00 per month because the boys were playing hickey games in my place of business. I opened in October, 1928 and the boys commenced playing in November. By the boys, I mean my patrons in my office. They were mostly married men, miners. My place is called the Pow-Wow. I had candy, cigars, tobacco and I had insurance and later I had a soda fountain but not at that time, and there were card tables and cards. Hickies were stamped, aluminum checks, good for so much in trade. The games were played with the hickies. They played rummy and whiskey poker without the

whiskey, and later on they played Black Jack with twenty cents—four hickies on the cards, and then finally they played stud poker with a one chip ante, a two chip bet and no raise. The hickies represented five cents in trade. They were used in my store in place of cash and once in a great while I redeemed the hickies in cash. Any time some of the boys would happen to want some money I would give them face value for them but most of them was in trade, and I did that quite often. The hickies were used for playing and represented the value as shown on their face. Occasionally I cashed them. Welch only came in there once. He asked me if he could get my name on the list and I refused. That was in December, 1928, and I never was interfered with. Later I was Justice of the Peace and maintained my office at the place of business. Harwood came in in January, 1929. Said it was reported at the council meeting that I had refused to pay anything and he came down to see me personally about it; wanted to know what I thought of paying something to the city as the others were doing, and I refused to do it. He did not attempt to force me at all and did not threaten prosecution. When I told him I would not pay he left. That was the last time Harwood or anyone else spoke to me about it.

CROSS EXAMINATION

BY MR. NUZUM:

I took a rake-off of fifteen cents in hickies. I redeemed them at times and cannot tell any one that I

refused. I cannot tell how many times I cashed the hickies. I ran the place after I was Justice of the Peace and I took off the kitty after I was Justice of the Peace. I never interrupted a justice case to start a hickey game; my justice cases were very few, and I don't think I ever interrupted a hickey game to start a justice of the peace case. I had no gambling cases; I had no prostitution cases. No prohibition cases since I took office. I had a few drunk and disorderly cases, most of them civil matters. It was after the first of January, when I was made Justice of the Peace, that I opened up another room at the rear, at the back of my confectionery. When I put in the soda fountain I did not have room enough for any tables in there. I put in some booths and then opened up a room right back of where the boys play cards, in the very front of the building, where I had the Justice of the Peace office; the Justice Court was separated from this hickey gambling by a partition; it was in the same building, and both were conducted by me.

CROSS EXAMINATION

BY MR. BANDELIN:

The boys had to pay actual money for all the hickies. In playing Black Jack the boys just played the game among themselves. When a man has a Black Jack he becomes the dealer and the rake-off was three hickies in kitty each time they turned a Black Jack. Those went to the house. The reason the limit was kept down

was to distinguish it from vicious gambling games. Sometimes they would be young fellows in there. Occasionally I played a little poker. Have played quite a little bit. The limit was one chip ante and one chip bet and no raise.

JAMES B. WILCOX, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is James B. Wilcox; I live in Mullan, Idaho; I am cashier of the First National Bank; I have been Justice of the Peace several years. As such I have not handled any prohibition cases. I am the same Wilcox who was a member of the committee of civilians in Mullan in 1924 in consultation with members of the council relative to an occupational tax. We discussed a license tax for the so-called soft drink parlors or places. The discussion was as to levying a license on all lines of business in the city. The amount of each classification was discussed. There was very little discussion about the soft drink places except as to the extent of their business. There was slight discussion about soft drink parlors as booze joints. The council was all present. This discussion was quite a time before the ordinance was passed.

CROSS EXAMINATION

BY MR. POTTS:

At the time I attended this meeting I was conducting the First National Bank of Mullan. At that time the bank was holding outstanding warrants of the Village of Mullan in a considerable sum. That was one of the reasons I attended the meetings in the interest of the financing of the village. I took up with the council the plan of financing that would permit the Village of Mullan to pay its expenses. At that time the outstanding warrants were more than \$5000.00, and in conjunction with the finance of the village I took an interest in the plan that was proposed for raising revenue. I think I attended only one meeting. I was advised of my appointment by the council as a citizen member of the committee to fix the schedule of license fees and acted on that committee. I do not remember about fixing the soft drink licenses, but as to the other businesses, that was the part I was particularly interested in. The plan to bring about an equitable distribution of the burdens of running the village, and it was discussed that certain lines of business that paid little or no property tax should pay a higher license tax in order to arrive at an equitable distribution of the burdens of running the village, and with reference to the soft drink places, because of the fact that they stayed open longer hours, much longer than the ordinary places of business, should pay a higher license. I have lived in Mullan twenty-two years; been in business that long. The peo-

ple of the town are entirely connected with the mining business and in operating my bank I catered to the miners. I kept open at night sometimes. The places of amusement or recreation kept open longer than any other town to provide recreation for the miners, and that was discussed and considered in fixing the license for soft drink parlors in Ordinance No. 105. The fact that they should pay a higher license because of the fact that they ran late hours and it was necessary to provide for police protection, I believe was discussed. I would not say who suggested it, but it was discussed and that was the basis on which the \$25.00 per month licenses were fixed. I did not hear any suggestion that the license fee of \$25.00 per month should be fixed for soft drink establishments on the basis of permitting them to sell intoxicating liquors or that they would be permitted to sell intoxicating liquors. In the minutes of the meeting of the village trustees on January 18, 1924, I am the J. B. Wilcox referred to. I do not recall attending any other meeting. I have no independent recollection as to what trustees were there. The committee estimated how much revenue would be raised or could be raised by the licenses, but I do not remember the figures.

CROSS EXAMINATION

BY MR. NUZUM:

I had no prohibition cases or gambling cases or prostitution cases before me. If there were any raids on ac-

count of violations of the liquor laws they were all handled by Judge Martin, and I only handled police court while Martin was out of town. I was the only Justice at that time. Outside of these cases that were taken to the courts of large jurisdiction, that is the Probate Court or the District Court in Wallace, they were handled by Judge Martin.

CROSS EXAMINATION

BY MR. POTTS:

The plan of licensing various places of business at Mullan was generally discussed among the citizens and had their general support.

RE-DIRECT EXAMINATION

BY MR. RAY:

My bank paid an occupational tax of sixteen dollars per year. I do not remember how many soft drink places there were in Mullan; probably several. There have been sometimes one and sometimes two drug stores and at one time a third store handling drugs or prescriptions. There were probably three or four soda fountains.

RE-CROSS EXAMINATION

BY MR. POTTS:

In addition to the license fee the bank made volun-

tary subscriptions, and the bank owned its real estate and building and paid property tax in the city. At various times subscription lists of the character of plaintiff's Exhibit No. 2 and Exhibit No. 7 were presented to us and we were asked to subscribe, and we did at the rate of five dollars per month for night policeman or watchman. Exhibit No. 7, under November, 1926, shows the name of First National Bank of Mullan, Idaho, \$5.00; that was one of those subscriptions. It ran for nearly a year, and from time to time the bank made subscriptions for various city purposes.

RE-DIRECT EXAMINATION

BY MR. RAY:

The subscription that I have indicated was for the purpose of hiring a night policeman for burglary protection.

Q. I hand you the sheet in plaintiff's Exhibit No. 7, dated Mullan, Idaho, September 3, 1926, and ask you if your bank appears thereon?

A. It does; in the amount of five dollars.

Q. The top of that reads: "We, the undersigned, business houses and citizens interested in the protection of the village from fire and burglary, and for the peace and orderly government of the community, hereby subscribe the amounts set opposite our respective names for a special monthly fund to employ a night policeman, the said fund to be used strictly for police purposes."

I show you another sheet in the same exhibit, dated October, 1926, and ask if your name appears thereon?

A. It does. And the bank subscribed five dollars, and under the same heading for September, November and December, the same amount from the bank. Whoever was Chief of Police made the collections. A subscription list was kept up until there was a night policeman put on by the city. I do not remember any other subscription than that. I have testified relative to the employment of a special officer. I recognize the sheet dated September 3, 1926 and the names appearing thereon. I do not remember after the 4th of February, 1924 until November of this year of any official of Mullan presenting a list asking for a payment for any purpose other than what you have shown me. That is for special police and we were never asked to contribute to any street or bridge fund. We may have contributed to most anything that was asked, for instance baseball or any charity. I was not asked during the period from February 4, 1924 to November, 1929 to contribute on any list or any suggestion made to me verbally in association with those conducting liquor houses, gambling houses or houses of prostitution.

RE-CROSS EXAMINATION

BY MR. POTTS:

I do not undertake to say I remember all the different subscription lists which were made during those years. I did make subscriptions for various other purposes

than the matter of night policeman, and when subscription lists were presented to me I did not examine the names of those who had subscribed always but usually did; sometimes I would be in a hurry, and I would usually be at the top of the list or second, third or fourth. I would not know whom the list was presented to afterwards. The first subscription I made to the Village of Mullan was for the employment of a night policeman because the city funds were in such condition that they could not employ a policeman, and that was the condition in Mullan for years during the period I have been talking about. The revenue was insufficient to run the town and that was the reason for the license ordinance.

J. L. Martin, recalled, testified:

CROSS EXAMINATION

BY MR. POTTS:

I have produced the annual report made by me as treasurer of the Village of Mullan for the years 1924 to 1929, inclusive with one exception. I think the one for 1926 is missing. I do not know what has become of it. I could not find it in the office. I have with me the vouchers representing the expenditures of the village funds during those years. The figures are taken from the records and they are correct, and compiled from the records. Defendant's Exhibit No. 17 was all compiled by me from the records. They are the annual reports for those years.

(Defendants' Exhibit No. 17 admitted in evidence, considered as read to the jury, showing totals of receipts and disbursements in the exhibit.)

WITNESS: These receipts, as shown by the annual report, contain all of the license fees collected during the years in question, summed up as a total, as well as all of the donations and all money received from property tax, and in my disbursements are included all warrants drawn from the funds of the village, and all payments made out of the funds of the village after Ordinance 105 was passed. I procured a license book early in 1924, and from that time until July of this present year I continued to issue those licenses. I maintained an office for the conduct of the city business and conducted the business of City Clerk, Village Treasurer, Police Judge and any other city business that came to my attention and some private business. It was the place where the financial business and the administration business of the city of Mullan was conducted. I was there practically all of the time. I was paid monthly; my salary was seventy-five dollars per month the first year and afterwards ninety dollars per month during one year and since that date it has been \$93.35 a month. The trustees met the first Monday in every month except the special meetings. If there were any other matters on hand, any special meetings for some special purpose, it was taken up at the special meeting or the adjourned regular meeting, and these special meetings were for considering matters in connection with improvement districts rather than general

matters, as a rule. The license books, plaintiff's Exhibits 6-A to 6-J, inclusive, were issued by me without waiting for orders or consultation with the trustees; in the regular course the licenses were issued the first of each month, the monthly licenses and the annual licenses the first of each year. I took the license ordinance and proceeded to issue the licenses without submitting them to the trustees. It was not my practice during these years at any time to submit to the trustees a report of the licenses that had been issued under ordinance No. 105; that is, a detailed report. The monthly report as treasurer is made up from the several licenses issued for a lump sum; that is, for instance, "April Receipts on City Licenses, \$518.00." And that is the way it is reported to the trustees throughout the entire period. I did not submit any other report showing to whom I had issued licenses. When I issued the license I filled in the name of the person to whom it was issued and these books are the only records showing to whom they were issued. During the period from 1924 as new members of the council and new trustees were elected there was no discussion or any action taken with reference to these licenses in council meeting. The matter was not presented to the new members as to whether or not licenses should be issued. When Ristau was elected there was no report of the persons to whom licenses were issued except once, and when Wheatley took office there was no report, except one time. The matter was not presented in any way after Foss was elected in 1927, and the same with reference to Huston except

once. I was present when Needham was elected Chief of Police. I heard the discussion about his salary. It was to be \$175.00 a month and the amount was fixed at a subsequent meeting and there was nothing said about his getting a percentage of collections as compensation.

RE-DIRECT EXAMINATION

BY MR. RAY:

I cannot give the jury the date when this one time I made reference to when Ristau, Wheatley and Huston were present. It was about two years ago last May, I think. The occasion was I was being reappointed as clerk. I stated to the Board that they well knew my position on intemperance, and therefore I felt that something ought to be done in reference to the soft drink licenses—words to that effect. I wrote a resolution that I wanted entered in the minutes that I had entered a protest in the matter. No action was taken because at that time Mr. Hull, the village attorney, stated to the Board and to me that he thought it best that I withdraw the request and not have it in the minutes. He stated that I had written something in reference to the matter in the local papers and he thought it wouldn't be a timely time, or words to that effect, to have such a resolution passed. My annual report to the village of Mullan (Exhibit No. 17) includes receipts under the heading of "city licenses", receipts for the issuance of licenses proper, plaintiff's Exhibit No.

6, including 6-A to 6-J, both inclusive, as well as the receipts received through plaintiff's Exhibits No. 2 and 7 under the heading of "city licenses."

MR. RAY: I show you sheet headed "Mullan, Idaho, September 3rd, 1926, plaintiff's Exhibit No. 7, which reads in part: "Mullan Garage, \$10.00; Home Toggery, \$10.00, M. F. Legore, \$10.00, Taylor Motor Company, \$10.00, Stoly's Garage, \$10.00—." I ask you, Mr. Martin, what those subscriptions were made for, if you know?

A. They were made for the purpose of engaging a night policeman. They were made for the months of September, October, November and December, 1926 only, and a night policeman was employed, and during the same period collections were made from persons running houses of prostitution, gambling and liquor dispensaries, on different lists.

RE-CROSS EXAMINATION

BY MR. POTTS:

I cannot say. The article mentioned appeared in the Mullan News published February 17, 1928. I wrote a number of articles at the same time these donations were being made, and I asked the citizens of Mullan generally to make donations, similiar donations.

MR. POTTS: Defendant's Exhibit No. 18 is an issue of the Mullan News, dated Friday, February 17th, 1928, and reads as follows:

“OBJECT LESSON FOR MULLAN: In the first column of the first page of the *Spokesman Review* of February 16, we read the glaring head line “Tell the World-Spokane Did It”. About the first of the year the active business men of Spokane undertook to raise by volunteer subscription a \$230,000 community fund, to be used for advertising Spokane and to be applied for any movement for the general community good.

This movement should mean more to small towns and villages than it really does for cities of the magnitude of Spokane. The Spokane committee arranged for the YYW radio station in Chicago, one of the largest in the United States, to broadcast the results of their financing every hour of the night of the 15th. What a wonderful advertisement for Spokane. Millions of people hearing such a wonderful financial achievement every hour in the night. It conveyed the thought of the community spirit; of men and women interested in the growth and good will of their city; which is far reaching, including the Inland Empire, which includes Mullan and you and me. Spokane cannot grow without affecting the entire Northwest favorably.

What is Mullan doing to advertise her resources, climate conditions and opportunities for investment? Spokane's tax levy, including local, state and national, is about 57 mills; ours including the same accounts, is scarcely above 42 mills; we are frequently reminded that our taxes are excessive. The citizens of Spokane are assisting the general taxes annually to the average amount of \$230,000. Four years ago, the village of

Mullan undertook the same plan to subsidize her general fund, for use upon the streets, bridges, lights and fire protection and as a result volunteer subscriptions amount to about \$5000 annually. The chief of police carries about such a subscription paper the first half of each month, and I can assure you, he will be proud to turn in twice his usual monthly fund, and will welcome the subscriptions of any citizen for any amount you may feel able to contribute.

Many citizens ask for contributions for improved streets, sewers, additional lights and street cleaning and criticize when the annual budget adds a dollar to their taxes.

The coming year the village will be called upon to build an incinerator to take care of the garbage, which has become an eye sore and a nuisance. We will be called upon to assist in financing an airport for the growing interest in aviation. If not this year not later than 1929, we will be called upon to build two concrete bridges across the south fork of the Coeur d'Alene river, which will have to be raised by a general tax. Do not overlook the fact that Mullan is growing. We have had established in the village since the opening of the new year the Model Laundry, which is a going concern, and from authentic reports was planned too small and will have to be enlarged. The loss of the old City Bakery building was a "blessing in disguise." We have now an up-to-date Electric Bakery, which any city would well be proud of, and the old site will have

to have a brick or concrete building placed upon it when reconstructed.

Let every citizen put his shoulder to the wheel and make the year 1928 the very best that Mullan has experienced. J. L. MARTIN."

RICHARD E. COOPER, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Richard E. Cooper; I live in Medford, Oregon; I was employed by the United States Government in 1929 under direction of Special Agent Donald B. Rogers, United States Treasury Department. Under Agent Donald B. Rogers I came to Shoshone County, Idaho on March 30, Saturday night at 9:00 p.m. I met Rogers there April 2nd or 3rd, in the year 1929 at the Ryan Hotel, Wallace. Prior to that time I had made a trip to Mullan, Idaho. I went to Mullan on April first of this year; got there about 9:30 in the evening; went to the Rockford and bought a drink of whiskey from Charles Anderson, served over the bar. I then went to the Bolo, watched a card game. I had seen some fellows going back and when the door swung open I saw them drinking. I went back and bought a drink; four or five fellows were drinking. I set them up. Blackie Coughlin served those drinks. One of the fellows who drank with me was Hartford Morphy. After

I bought a drink for them somebody said, "I will set them up now." I says, "I don't want a drink—I don't care for any more." I walked out to one of the card tables and watched them playing cards for a few minutes and a man walked up to me . I later found that he was Hartford Morphy, and he put his hand on my shoulder and says, "Are you working here in town", so I stepped back to the slot machines, and he said, "I want to talk to you", so we walked into the lavatory room there, and there was an unused card table there, but there wasn't any game going on. He started to question me. He wanted to know if I was working in Wallace or Mullan. I said, "No, I just came, but I contemplated going to work." He says, "Are you stopping at Mullan?" I says, "No, I just came up from Wallace." He says, "Have you got any money?" I says, "I have some." "By the way", I says, "who are you?" He says, "I am Hartford Morphy, Night Patrolman." I says, "All right." He says, "Shell up." I took out everything I had in my pockets and showed it to him. He says, "You are not one of these Federal stool pigeons here?" I says, "No." He says, "I don't care how much you drink around here, but don't get drunk or I'll throw you in." He says, "Let's have a drink." I says, "I don't care for a drink now." He walked up to the front end, and I followed and walked out. I then went to the Bilberg and was sitting there watching a card game going on, and I saw some fellows drinking up at the bar, and I went up and had a drink at the bar, from Charlie Fond; a drink of moon-

shine paid twenty-five cents for it. I remained there about ten minutes. I came down to the Miners Club, and there was a young fellow in there, and I propositioned him to shoot a game of pool, rotation pool. He said, "All right, let's shoot a game for a drink." I says, "Fine and dandy." We shot a game of pool and I lost the game. I suggested that we walk over to the Bolo and get a drink. He says, "That is too far, let's go right back here and get it." We stepped back and ordered up the drinks and I paid twenty-five cents for two drinks of moonshine. I do not know from whom I made the buy.

From there I went to the popcorn stand to get some candy and saw cards and a little table in the back room and right to the left of this table another little room. I looked in and somebody said, "Come in." Two men were drinking. I had one more drink of moonshine whiskey; paid twenty five cents for it to Mike Kennedy. I then took the stage and went back to Wallace. Reported this matter to Mr. Rogers. I was in Shoshone County all the month of April. I was back to Mullan and occasionally got a drink; did not keep track of it. Agents didn't want me to as I was doing other work. I was around Wallace during that period. I left Shoshone County and returned there on the 3rd of June. I was not there in May. Mr. Rogers, Special Agent, came with me in a Government Chrysler car. We went to the Ryan Hotel and registered. I went to Mullan once in a while after that and would buy a drink, to see

whether I was still able to buy in town which I was. During that period I was buying drinks in Wallace. On June 15, 1929 I saw Mr. Weniger at the hotel. Rogers was with me, and I walked over to the desk and laid the key on the register, and Rogers preceded me toward the door. Weniger stepped up and tapped me on the shoulder and said, "I want to speak to you," so we walked up towards the front door, out where Rogers was, and Weniger stated, wanted to know who that fellow was. I said, "He is Rogers," and he said, "I want to talk to you fellows about some bad checks that have been passed up in Mullan, and you fellows answer the description of the fellows wanted for passing these bad checks, and so Mr. Rogers figured that we were uncovered—

THE COURT: No.

Q. Just state what was said.

A. Rogers said that that is our identity, and he opened up his coat and showed his badge to Weniger, and says, "This man is working with me." Weniger says, "Let's take a walk over to the office", so on the way over it was stated by Weniger, that he had a right to know everybody that was working in his county, and their business. So we proceeded over to the office, and we went into the office and sat down, and Mr. Weniger wanted to read Mr. Rogers' credentials, so Rogers showed him a check, and Government papers and proved to him that he was a Federal officer, and Mr. Weniger stated that there were a couple of men in

there, detectives, working on those bad checks, and that they wasn't in at the time, but had gone to Mullan, and during the conversation he called in Charlie Bloom, and Charlie stood by the door and listened to the conversation and the Sheriff says, "Well, those Government credentials don't look like they could be forged very easily, and you fellows will be in town." We assured him that we would, and Rogers said as soon as these fellows came back from Mullan, the detectives, that he wished the Sheriff would send them over to Rogers, as he wanted to talk to them personally, and the Sheriff while I was there asked if I wrote any checks. I said I wrote checks, but they were American Express checks, that that is the way I signed myself before I went in there. Rogers received his money by telegraph from his folks in Seattle. After Rogers had shown Mr. Weniger his badge again and the government request for transportation for the purpose of identification Mr. Rogers asked the sheriff to show him these checks, but the sheriff said he did not have them, but that the two detectives had those checks and that they would be back and as soon as they arrived back from Mullan, he would send them over to us, and we left the sheriff's office. Neither Rogers or myself saw either of the detectives Weniger spoke of, but he said their names were Hatch and Parnum. After leaving Mr. Weniger we went back to the hotel, went up to Roger's room. We did not talk with any one but Weniger and Bloom and about ten or fifteen minutes after we left the sheriff's office Rogers sent me out to see if I could

buy any drinks in town. I then left the hotel room and went to places in Wallace. I went to Jack Chisholm's place, next to the Banquet Cafe.

Q. Did you try to buy there?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: In Wallace?

MR. LANGROISE: Yes sir, if your Honor please, we will follow this up as a part of the same transaction in Mullan. It is a part of the activity of the defendant Weniger in connection with the conspiracy. It is all one transaction. We will show that he was unab'le to buy from then on and had been able to up to that time.

MR. NUZUM: I do not think that that is admissible.

THE COURT: Objection overruled.

MR. NUZUM: Exception.

MR. LANGROISE: You may answer, Mr. Cooper.

A. I could not buy. I had been in that place before.

Q. And had you been able to buy on every occasion before?

MR. NUZUM: Just a minute, I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. Had you?

A. Yes sir.

I next went to the Pastime.

Q. What did you do there?

MR. NUZUM: I object as immaterial and incompetent.

THE COURT: Overruled.

A. I tried to buy a drink.

MR. LANGROISE: Q. Whom did you try to buy it from?

A. Nick Pavelich.

Q. What happened?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I went in there and said, "Give me a drink."—

THE COURT: No, not the details. With what result, was the question.

A. I could not buy.

MR. LANGROISE: Q. Had you been buying in there prior to that time.

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. I had.

MR. LANGROISE: Q. Had you been able to buy on other occasions that you had tried prior to this time?

MR. NUZUM: I object as immaterial and incompetent. The witness answers so quickly that I cannot get my objections in.

THE COURT: The objection will be overruled and the record may show that the objection was interposed timely.

MR. LANGROISE: Q. You may answer. Were you able to buy on any other occasion that you had tried to buy there with the exception of the morning of the 15th after you had been to the sheriff's office?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT. Overruled.

MR. NUZUM: Exception.

A. I had.

MR. LANGROISE: Q. Where did you go next?

A. To the White Front.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Were you able to do so?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

MR. LANGROISE: Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Had you been able to buy there on every occasion that you had been there before until the morning of the 15th after you had been in the sheriff's office?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Where did you next go?

A. To the rooming house upstairs at the Wallace Corner, the pool room over the Wallace Corner.

Q. Were you able to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

MR. LANGROISE: Q. Had you been able to buy there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE. Q. Had you been able to buy there every occasion prior to that that you had tried?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Where did you next go?

A. To the St. Francis Hotel.

Q. And did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No sir.

MR. LANGROISE: Q. Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Had you been able to buy there on every other occasion that you had tried to buy with the exception of this occasion on the 15th after you had been taken to Mr. Weniger's office by Mr. Weniger?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q: Where did you next go?

A. Back to the hotel.

Q. Where did you then go?

A. To Mullan, Idaho.

MR. LANGROISE: Q. And when you got to Mullan, where did you go?

A. I went to 111 Second Street known as the Rockford and tried to buy a drink.

MR. NUZUM: Just a moment. He asked him where he went. I move to strike the answer.

THE COURT: Motion denied.

MR. LANGROISE: Q. Who was in there at that time, if you recall?

A. I don't recall.

Q. Were you able to buy a drink there?

MR. NUZUM: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. LANGROISE: Had you bought drinks there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Had you been able on every other occasion that you had tried to buy there prior to the time that you had been taken to Mr. Weniger's office by Mr. Weniger on the morning of the 15th, been able to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Where did you next go Mr. Cooper?

A. To the Miners Club.

Q. And whom did you see there, if you recall now?

A. I don't recall the man.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

MR. LANGROISE: Q. Had you made purchases there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Had you ever before been refused liquor there when you had tried to buy except this time after you had been taken to Mr. Weniger's office on June 15, 1929?

MR. NUZUM: Just a moment. He says, "Had you ever before been refused except this time. Now, I don't think that question is very intelligible. I object to it as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A. No, I had never been turned down.

Q. Did you go to any other place in Mullan on that morning on that day?

A. I went to the Miners Club and then to Mike Kennedy's Place.

Q. Did you try to buy at the Miners Club?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No sir.

MR. LANGROISE: Q. And had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. And had you ever been refused prior to that day when you had tried to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

MR. LANGROISE: Q. Then where did you go after the Miners Club?

A. To Mike Kennedy's popcorn stand.

Q. Did you try to buy there?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes.

MR. LANGROISE: Q. Were you able to buy?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No.

MR. LANGROISE: Q. Had you bought there before?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. Had you ever been turned down or refused liquor there prior to the time—

THE COURT: Prior to the time that he was refused?

MR. LANGROISE: Prior to the time that you were refused?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. No, I was never turned down.

MR. LANGROISE: Q. And the drinks that you have referred to in your testimony were of intoxicating liquors?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. This all occurred in Shoshone County, Idaho?

A. Yes sir.

CROSS EXAMINATION

BY MR. NUZUM:

Q. "What license number did this car have?"

A: I do not recall the license number of the car." It was not issued to a Chrysler car. It was a State of Washington license. I did not assist or authorize or direct the changing of the license. I did not know I was driving a car with a wrong license on it until Rogers made the statement in the sheriff's office; that is the first time I knew it. I drove it afterwards. I was in Wallace practically all of the month of April, working in Shoshone County. I stopped at the Ryan Hotel. I had various rooms. Do not know which one was the first one. I can only tell the number of one room in the Ryan Hotel, No. 130; that was April 1, 1929 at noon. I changed rooms several times in the Ryan Hotel. I was assisting the special agents in investigations, in violations of the National Prohibition Act in Shoshone County. We got information in different ways, in interviewing people, going to joints, and everything like that. I was not drunk at the Ryan Hotel; did not lie in my room two days drunk; was not intoxicated there at all.

•

Q. Did you have any liquor that you offered to the clerk?

A. Well, on one occasion I was working around the joints and Mr. Rogers was around with me and the comment came up around the lobby of the hotel there that it was funny that his chauffeur was out running around drinking in the joints and that he never went in, so on this occasion there was a miner friend of mine, I don't recall his name right now, that stopped around the hotel there, and he always had a bottle, so I got from him about a little over a half pint of whiskey and to allay suspicions I gave this bottle to Mr. Rogers and he called in Mr. Patterson, the night clerk there, and gave him a drink and a mining man by the name of Mr. Walker, I believe, and then he saved a little more of the bottle and gave Elmer, the day clerk, a drink, and that killed the bottle.

Q. What did you say about allaying suspicions—were there suspicions around there?

A. Well, it was said around there that it was funny you never see Mr. Rogers drinking and I was going around the joints. They were suspicious because Rogers did not drink.

Q. Didn't you mean that they were suspicious that you were a Federal man even at that early date?

A. I don't recall it.

Q. Was not that the suspicion you had attempted to allay?

A. No sir.

Q. The suspicion that you attempted to allay had nothing to do with what you were doing there?

A. "No, not at that time." They said around there it is funny Mr. Rogers' chauffer is drinking around here and we never see you take a drink, Rogers. People around the hotel lobby said that. I cannot recall just who said it at this time. I cannot recall any of the parties. I cannot tell you the exact date of that either. It was in the hotel lobby of the Ryan Hotel. I don't know who said it. It was said around the lobby and we overheard the conversation.

I never offered Patterson, the night clerk, a bottle of Canadian Club if he would do a certain thing for me.

(Mr. Patterson called in and identified.)

On one occasion I went to a dance at Cataldo, before I came to Wallace.

Q. Were you stopping in Wallace and did you leave the Ryan Hotel in the car, saying you were going to a dance at Cataldo?

A. I did not.

Q. Didn't you come down from your room into the lobby of the hotel and tell Patterson you were going to a dance at Cataldo and drive the Chrysler car?

A. No.

Q. And didn't Patterson tell you that if you got in that Chrysler car and drove down there, you were so drunk that he would have you arrested?

A. I don't recall the incident at all.

Q. Will you say that the incident did not occur?

A. Not in my memory, it never occurred to me.

Q. Well it might have occurred and you not remember it?

A. Well when a man generally speaks of a thing to me I can remember it.

Q. I say that might have occurred and you not remember it.

A. Well he might have been standing a way off some place where I could not have heard him.

He might have said it when I could not hear him.

Q. Didn't you make it in front of the desk on this occasion, and Patterson told you you were drunk, and you straightened up and, as he says, talked out of one side of your mouth, and said, "I want to show you that I am sober?"

A. No.

Q. That did not occur at all?

A. No.

I did not drive the Chrysler car down to Cataldo to a dance.

Q. Do you remember the occasion of asking Patterson who a lady was up in Room 33?

A. No.

Q. You do not remember the occasion?

A. No.

Q. Did you ask him who she was?

A. May I say it was this way— — — —

Q. Answer that yes or not and then you can explain. Did you ask him who she was?

A. No.

I do not remember the occasion.

Q. The incident never occurred then, did it?

A. "Now, I am going to tell you how this happened."

On several different occasions, Mr. Patterson would call me to one side and says, "Business is a little quiet around here and I am on night clerk duty working at a small salary here and occasionally I run in a girl or two and if you ever want any company for the night or anything, why, I would be glad to help you out," and he says, "I will call your attention that there is one in thirty one across from you," and so when I came into the hotel that night accompanied by Mr. Rogers, she had her door open and Mr. Rogers came into my room and we shut the door and she immediately knocked at the door and asked us for some matches. That was in room 31, right across from me, if I recall the number right. I cannot give you the date. I cannot give you the month. I cannot remember whether it was the last part of April or the first part of June. I was not there in May; it was either the last part of April or the first part of June. The room was right opposite the one I was stopping in if I recall right. We had been looking out for something like that and all that during the time we stopped in that hotel, and Mr. Rogers and I would alternately change rooms and sleep together and

there was not time during that time that I was in the Ryan Hotel but that Mr. Rogers and I either slept in his room or in my room together.

Q. Why?

A. Because it has been a practice among the special agents, the boys out on the road, to use that to prevent any frame-ups.

We did not expect a frame-up but we were on the watchout for frame-ups. We did not figure no frame-up then.

Q. All right. Now, didn't you go downstairs and ask this man Patterson who that woman in thirty three was and tell him that the same woman in thirty-three had smiled at you?

A. No, I did not. He brought the subject up himself.

Q. Well, did you tell him that she had smiled at you?

A. No.

Q. And didn't he tell you that she was a married woman?

A. Oh, no.

Q. And did you not on that occasion tell Patterson in the hotel office, I think it was the same evening on which you say she smiled at you, that you were going to knock at her door that night?

A. I did not tell him no such thing.

Q. And didn't you tell Patterson that you would

give him a quart of Canadian whiskey if he would introduce you to the woman?

A. I did not.

Q. That conversation did not occur at all?

A. No.

I was drinking three, four or five drinks a day on some occasions and other times may be a drink or two in one place, and the next day it would be in another place. Rogers and I were sleeping together every night, either in his room or mine, except when he was not there. We were together the 13th of June. Rogers was not drinking, was perfectly sober; We did not have any whiskey in the room. He did not go to Mrs. Gearon's apartment about 10:30 on the evening of the 13th of June. I am positive about that. I was with him. He went to bed that night, I should judge, about nine o'clock.

Q. You have a distinct recollection on that, I suppose?

A. Well, that was our time of turning in when we did not have any more work to do. Lots of nights we were up late.

My recollection is just as distinct as any of the rest of the nights. It was getting along toward the last of our case and we did not have much to do. I think we slept in Room 33. No. 33 was Rogers' room. I do not know who went to bed first. The reason I remember we slept in Rogers' room was that towards the last we were sleeping quite connectedly in his room because it

was a front room and we could get better air up there. I pulled out of there, I believe, on the 30th of June. I was not in there at all in July. I was not having any difficulty before the 15th. I was not having difficulty in buying stuff before getting into trouble with Weniger. We were not getting along very well because they was running the foreign element in there at that hotel, the people that I had seen around these joints that had been stopping around these fifty cent flop houses, and all of a sudden they got money enough to stop in better hotels and they were running them all in there to the Ryan Hotel.

Q. Who was running them in?

A. Well, I cannot say who that is.

We thought they were doing it because they were suspicious of us. That was prior to June 15th.

Q. You thought they had your number, didn't you, prior to the 15th?

A. A few days prior, yes sir. Around the 13th.

Q. From the 13th you thought you had been uncovered, didn't you?

A. That is why I went in these joints in order to determine in my own mind whether I was or not.

We went up to Weniger's office on the morning of the 15th. We had not made up our minds definitely, but we wanted to find out, whether we were uncovered. We had not determined it but we had suspicioned it. They commenced to run the foreign element in on the

13th. I had no difficulty in buying until the morning of the 15th. I made a buy on the 14th.

Q. Then what made you think you were uncovered?

A. Well, from the element that was stopping in the hotel, there, watching us around the hotel.

Q. Did you not testify a minute ago that from the 13th on you had difficulty in buying stuff?

A. I said to you that I was able to buy up until the morning of the 15th.

Q. Didn't you state a minute ago or within 4 or 5 minutes that from the 13th on you thought you had been uncovered?

A. That was what I went around—

Q. Just answer that question, I asked you whether you stated on the stand a minute ago that from the 13th on you thought you had been uncovered; did you state it?

A. I said that we were suspicious—

Q. Just answer that.

THE COURT: He is answering.

MR. NUZUM: You said what?

A. I said we thought we would probably be uncovered.

Q. Thought that you would probably be?

A. Uncovered.

Q. Or had been?

A. I did not say that we exactly had been uncovered.

Q. You thought you had been?

A. Yes.

I made buys up to and including the night of the 14th, but I could not make any on the morning of the 15th. Bloom came to the door of the sheriff's office and stood there. I do not recall his giving anything to Weniger. Weniger said he had two checks. He told Rogers who they were issued to. He was talking to Rogers. I do not know whether he told Rogers in my presense. I do not recall that incident. I will not say whether he told Rogers the amount of the check. Do not think he told the name of the Wallace man that had the check. Rogers later told me that it was the Theodore Arm Store in Wallace. I cannot recall whether he told Rogers or not, but I heard all of the conversation. After we had shown our credentials Weniger asked us what we were doing, and Mr. Rogers told him that as far as to his credentials in making himself known as a public officer, that is all right, but Mr. Rogers said, "at this time I am not going to tell no one what I am doing in this county." When Mr. Weniger asked him what he was doing in the county and what I was doing there it was after Mr. Rogers had shown his credentials. Rogers said he would not tell anybody what he was doing in the county. His credentials schowed that he was prohibition agent.

Q. Weniger, after he saw his credentials and saw

he was a prohibition agent, asked him what he was doing in the county?

A. He asked him what he was doing and what results he had had in the county, and Mr. Rogers would not tell him.

After Weniger had seen his credentials which showed Rogers was a prohibition agent, he tried to find out what we had been doing in the county and Mr. Rogers would not tell him; that is, the results of the work, and Rogers would not tell him. Rogers and I left Wallace on the night of the 15th; went to Spokane, Washington. We did not go to Sandpoint then but went straight to Spokane, I do not recall the day when we went to Sandpoint. We were uncovered by Weniger between 9:30 and 10 in the morning. I called on six places in Wallace. We got to Spokane about midnight or past midnight; left Wallace late in the evening. I left Wallace during the day the first time to go to Mullan, about 11:30; was in Mullan about an hour and a half. We went to Weniger's about 9:30; do not remember how long we were there but it was not over half an hour. We left the sheriff's office and were about five minutes in our room and made six attempts up to 11:30. I did not do any visiting because the element did not want to visit with me very bad. They were figuring definitely that I was a government man, they had been told. I arrived at that because they would not sell me any whiskey. They had never refused me all the time I was in the Coeur d'Alenes up until this instance. I

was refused once in Kellogg. I was in joints every day and the people were cordial to me on the 13th, the 14th the same as always. On the 14th I made only two buys that was in the evening and they were the same to me as always.

Q. Then what occurred to make you think on the 13th that you had been uncovered?

MR. LANGROISE: I object to that as a repetition, if you Honor please.

THE COURT: Objection is sustained.

MR. NUZUM: Exception.

I was not in Mrs. Gearon's room with Mr. Rogers on the evening of the 13th about ten thirty o'clock, on the 13th of June. Rogers was not drinking on the 13th. He had not taken any drinks on the 13th and was perfectly sober. He did not go in with me when I was buying drinks on the 13th. He trailed me and stood across the street and watched me go into the joints. He was waiting to see whether I could get it or not.

Q. Was there any question on the evening of the 13th about you getting it?

A. No.

He did not always trail me, but a good many times he did. He would pick out a place he would want me to go and would watch me go in several times until he was satisfied in his own mind that I could make a buy there. He kept that up all the time I was working. I cannot recall offhand when he trailed me on the 13th, but it

must have been about nine o'clock because we were out in the car all day.

Q. I thought you said the first one was nine?

A. We went to bed right after nine o'clock.

Q. I thought you said he trailed you to the first place at nine o'clock?

A. I did not say any certain time.

Q. You did not say he trailed you to the first place at nine o'clock?

A. No.

I did not give nine o'clock as the correct answer. I said about nine o'clock. It was late in the evening before we went to bed.

A. I said that I made a buy early in the evening, along about eight o'clock, a little after, and then about nine o'clock or a little before nine I went into another place and he trailed me and we departed and went to the hotel and went to bed.

Q. Mr. Witness, did you not answer me when I asked you the time that he trailed you to make the first buy that it was about nine o'clock?

MR. LANGROISE: I object to the repetition.

THE COURT: The objection is sustained.

MR. NUZUM: Exception.

Weniger said that the Spokane detectives were up there with two checks, that is, those detectives was the National something, and I cannot exactly remember

and Rodgers spoke up and he says, "National Surety." He says, "Yes, I believe that is it", and Weniger gave the names of the men. He was talking to Rodgers and I cannot recall whether he said there were three checks or some bad checks.

I know a man by the name of Joe Carbonneau.

Q. Isn't it a fact that in the early part of June, 1929 Joe Carbonneau and that man Patterson carried you up to your room one night drunk from the lobby of the Ryan Hotel in Wallace, Idaho?

A. They did not.

CROSS EXAMINATION

BY MR. POTTS:

My first place in Mullan on April 1st, 1929 was the Rockford Bar. I never had been there before; did not see anybody I had ever known before. The next place was the Bolo; saw Mr. Morphy in the front bar of the Bolo. I was watching the card games and when I walked back into the barroom he was in there. I had had one drink before I reached the Bolo. I saw Morphy standing down on the corner later in the evening when I was getting ready to take the stage. I bought the drinks for four or five men at the Bolo and then I walked back out to the card tables again and Morphy came out there and tapped me on the shoulder and said he wanted to talk with me. I said "Come on, boys, have a drink," and Morphy came up and drank with me.

intoxicating liquor; it was poured out of some bottle. It was moonshine whiskey. I had never known him before. I was a total stranger to him. Someone said, "Let us have another drink", and I declined and walked out to the card tables and Mr. Morphy, as he introduced himself a little later, came up and tapped me on the shoulder and said he wanted to talk with me. That was after he had taken the drink with me. He wanted to find out what my business was. I was dressed in high top boots, army pants, black shirt and a cap. He asked me if I was working. He asked me if I had any money. He asked me to shell out and I asked him who he was, and he said he was the night policeman; said his name was Hartford Morphy and I made a note of it when I returned to Wallace that night. I turned the name over to Mr. Rodgers. Later different parties pointed him out to me. If he told me Harcourt Morphy I may have gotten the name wrong. The first name was kind of a hard name to say. After I had shelled out he said, "Are you one of those Federal stool pigeons?" I said, "No." He said, "I don't give a whoop how much you drink around these joints, but I don't want you to get drunk because I am going to throw you in if you do." It was not over five minutes when I first talked to him when he asked me if I was a Federal stool pigeon. I was working with the Federal Special Agents.

CROSS EXAMINATION

BY MR. WERNETTE:

I had not known Charles Anderson prior to April 1st. Do not remember how he was dressed. I do not remember how many people I saw walking on the side street in front of the Rockford. Main Street had quite a few people on it. I was in that place about five minutes. Just long enough to buy a drink. I bought a drink of moonshine whiskey. There were some punch boards and stuff in front and a little partition and a little short bar in the back. This is where I got the drink. I was in the second room. I do not remember about candy, cigars and cigarettes, but the front bar was covered with punch boards and there was a slot machine in the back room; did not see any candies; did not see any show case. All I saw in the back room was a little bit of a roughly built bar and three whiskey glasses sitting up along the back. I made a memorandum when I returned to Wallace. (Produced memorandum for counsel for defense.) Later some of the miners would point out a man and I would ask what his name was. I do not remember how long it was until Charles Anderson was pointed out to me. I do not remember who pointed him out. It was on the street up there, I think. I designated the Rockford as the Oxford, on the memorandum. It was night and dark down there, and I later found out that it should have been the Rockford. I do not remember how many days later that was. It was a few days.

CROSS EXAMINATION

BY MR. REED:

When I got back to Wallace I did not put down the name of every place I visited that evening. I recalled later on this incident at the Bilberg Hotel. I never made any further notation for that evening.

CROSS EXAMINATION

BY MR. BANDELIN:

Mike Kennedy's place was next to the Model Bakery Shop. I remember it was a corrugated iron building and I looked for one next to the Model Bakery Shop. I did not have my memorandum with me that evening and did not make any notations until I got back to the Ryan Hotel. I wrote the notations on the back of an envelope and then copied them. The envelope has been destroyed as soon as I made the notes. Mike Kennedy had a little room in front and you went through curtains and a little table run out. If you call that a room in the middle then it opened into another room to the left. There were two or three sitting at the table. I cannot give their names. I looked at the bar tender; I always do that. I imagine he weighed 130 pounds; I could not say how tall; he wasn't a large man; he was frail. I later saw Kennedy on the street and recognized him as the man from whom I bought; (had him pointed out to me.)

CROSS EXAMINATION

BY MR. WALKER:

In getting into the Rockford, I do not recall whether you go down three steps into the barroom. I did not turn to the right. I walked through the door. You walk down through the barroom, but later on after the place was knocked over it was changed. I do not know how long the passage would be. The bar is located, as you face from the card room, to the left. I do not recall whether there is a door, as you go into the bar room. You cannot see the barroom from where the card table sits, but you can from where the slot machine sits. They had slot machines in the front room and in the bar room. I had five or six drinks before leaving Mullan that night, but they did not affect me. I had had supper before.

DONALD B. RODGERS, a witness called on behalf of the government, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Donald B. Rodgers; I live in Seattle. I am Special Agent, Bureau of Prohibition; have been in the employ of the government since 1919. For four years I was Special Agent in the Intelligence unit, and a year ago last July I was transferred as Special Agent with the Bureau of Prohibition. Prior to that time I was in the customs work. I visited Shoshone County with

Richard E. Cooper, the last witness. I was there first and then left, and made arrangements to come back. I arrived the 2nd day of April, this year. I was not there when he first came in. I was working in Oregon and Wyoming and in Montana, and would not be able to say how long I was in Shoshone County on the first occasion after Cooper had come. Cooper gave me memorandum in connection with sales in Mullan and I put them in my reports. I was in Shoshone County during the month of June. I do not think my identity was discovered. On the 15th of June, 1929 about nine o'clock in the morning I first saw Weniger in front of the Ryan Hotel.

A. Cooper came down the stairs with me, and I gave him my key, and he took the two keys over to the desk. I preceded him out of the door and had started down the sidewalk when I heard someone talking to him. I turned around, and Mr. Weniger said to Mr. Cooper, "Who is that man with you?" I stepped back, and Cooper said to me, "This is the Sheriff and the Sheriff wants to know of me who I was—"

He said he wanted to know who I was. I said to him, "I think my work has progressed far enough that I can let you know who I am." I put my hand in my pocket like this (indicating) and pulled my coat back like this and showed him the badge, and said, "Take a good look at this." I held it back so that he could see himself that it was a Government badge. He said it looked too complicated to be counterfeited.

Q. What happened after that?

A. He said, "We have had some bad checks passed in this county, and I have had some men working on it, and they think you two fellows are the men that passed the checks." I told him at that time that I was receiving my money—I believe I told him either there or his office—I was receiving my money by telegraph from Seattle, but Cooper was using traveler's checks.

Q. What occurred then?

A. "Well", he says, "I would like to have you come up to the office anyway, I would like to talk to you", and we started over toward the office.

Q. Just you and Weniger?

A. And Cooper. On the way over in his conversation he said that, "Of course you realize that as Sheriff I have a right to know who is in this county, and what they are doing." I told him at the time that he had a right to satisfy himself as to my identity, but as to what I was doing in this county was none of his business.

Q. Did you go to the Sheriff's office.

A. We did.

Q. And what occurred there?

A. We sat down, and on the way to the office he raised the point again, wanted to know where my little card was. He meant the pocket commission. I told him it was secreted in my suitcase at the hotel, but that I would get it for him if he wanted it. I felt there might be a little doubt in his mind.

He says that the car I was driving has got wrong li-

cense plates. He said, "I have had them checked, and the license plates belong to a Ford car in Seattle." I told him that was true, that these license plates were formerly plates that formerly belonged to a Ford car that had been cancelled, and had been given to our Department at Seattle by the Director at Olympia instead of providing the regular plates.

We went to the Sheriff's office and sat down. We talked about the car and Weniger says, "This is Charles Bloom, my Deputy." I saw Bloom there. After quite a bit of conversation we left the sheriff's office and I directed Cooper to do something in Wallace and afterwards went with him to Mullan. He gave me the various items as the result of his work. Cooper started in around Wallace not over fifteen minutes after we left the Sheriff's office.

CROSS EXAMINATION

BY MR. NUZUM:

I did testify that our work had progressed far enough so we could identify ourselves. But I did not feel that we had been identified as prohibition agents before we saw Weniger, but as special prohibition agents. You could feel sort of a tenseness around the hotel-sort of a feeling that maybe something wasn't just right. I had not become satisfied on the 14th that we were uncovered, but I did have a suspicion of it. I had told my business prior to seeing Weniger to two county commissioners, the county auditor and I think

one other gentlemen in town. This was very early in my work. The other gentleman was the auditor, Mr. Defenbach. These people I told some time in April what my business was. The county commissioners were Parker and Woods. The auditor was Defenbach. I had also told Walker, the United States Commissioner prior to the 15th. I do not recall another person. I am very positive I never told anybody else. I know Mrs. Gearon who runs the Hotel Ryan. Am quite well acquainted with her. I was not in her apartments on the evening of the 13th. I was there twice in July and April. I did not have a bottle of whiskey and give her a drink. I did not have a bottle in there. She had given me a drink.

Q. I will ask you if on the evening of the 13th of June, 1929, In Mrs. Gerrin's apartment in the Ryan Hotel, Wallace, if you did not go in there with a quart bottle of whiskey, and you were drunk?

A. I don't get drunk.

Q. And didn't Mrs. Gerrins ask you what you were doing, that she was satisfied that you weren't a mining engineer, and you told her that you were a Prohibition Agent?

A. That is absolutely preposterous.

Q. Isn't that true?

A. No sir.

Q. Were you drunk around that place?

A. No sir.

I was not drunk in Wallace; was not drunk around the lobby of the hotel. I drank with three different peo-

ple outside of Mrs. Gerrin. That was all the whiskey I drank in Wallace. One was the night clerk; one, the day clerk, and one a mining man by the name of Walker. Took one drink, once each time. I did not arrest any of them for liquor in possession. I drank in order to conceal my identity. I cannot tell the time exactly, but along about the time they were becoming suspicious. Cooper was drinking and I was supposed to be working for an eastern manufacturer that was very dry. Cooper had to drink to do his work. I still had to employ him as a chauffeur and that was the only excuse I had to make out with respect to myself. On the evening of the 13th I was working on the rehash of a couple of affidavits secured that day. I do not recall how late I worked; sometimes I work pretty late, sleep a while and get up and go to work. I have no definite hours. Never had any definite hours by which I went to bed at night. I had somebody with me nearly all the time when I was rehashing the affidavits. Cooper was with me on the night of the 14th. We went to bed shortly after nine o'clock. I do not know what time on the 13th. Cooper was with me. I think we were in my room on the 14th. I think we were there on the 13th. We headquartered in that room. We made it a point to be together in that room if we were not outside working. I stayed in the room practically all of the time during the 13th and 14th because matters were coming up the way they did. Nothing came on the 13th so far as Weniger was concerned or on the 14th.

A. There was one thing when we took the affidavits

on the 13th I registered them into Seattle by registered mail, and kept a carbon copy. I have a secret compartment in my bag where I placed them, and nobody can find them, and taking into account on looking them over, and rehashing them, and outlining our work, that would be the place where I would be during that time.

The reason I know I was there was I have a place in my bag and that is where I kept the carbon copy of these papers. The secret compartment was there on the 12th and on the 11th, and those are not the only affidavit I got in Wallace. I made them out on the 13th and kept one carbon copy. I did not want the general public to be prowling around my room and find them. The general public would not find them there. No one had been in my room on the 13th or 12th, 11th or 10th that I had any reason to believe was tampering with my room. The only people who came there were the hotel help as they generally do. We slept in my room every night. I am very positive we were there. I cannot give the exact date we slept in Cooper's room. Another reason I thought we were uncovered was I noticed a couple of strangers there that looked like people that had not been around there regularly. Perhaps their actions had something to do with it, with my feelings that perhaps things were not just right insofar as keeping under cover was concerned. These strangers were two detectives from Spokane, Walter Simmonds and C. W. Hatsh. I do not know whether Simmonds is the one that uncovered the fact that we had an automobile license on the car issued to a Ford. The license on my Chrysler car

was formerly issued for a Ford and re-issued for the Chrysler by the people who have the authority to do so. Maybury's records showed it was issued to the government. Maybury had that arrangement made so nobody could trace the car. If anybody inquired in regard to it, it would still be on the record as issued to a Ford. It was intended that they should run up against a stone wall. I do not know whether Simmonds was the man who found it out or not. Simmonds and his partner were the only ones around the hotel who caused me suspicion. I do not think that—

Q. Wasn't there a lot of foreign looking fellows that filled up the hotel that made you suspicious?

A. Filled up on the 15th?

Q. On the 13th?

A. I do not think so on the 13th.

Q. On the 14th?

A. I would say that I do not know.

I had no definite suspicions regarding anybody except Simmonds and his partner. They registered at the Ryan Hotel under their right names. I did not know Simmonds' business. I found out afterwards when we came to Spokane. I did not know that he was representing a number of banks on forged check matters. I saw one of the checks at Weniger's office. One had been given to Mr. George Newsome and one to the Theodore Army Store at Wallace. This was on the 15th in Weniger's office in the presence of Cooper. He showed me one of them. He did not state that the reason they

wanted to find out was because of the license plates not being issued for that car in that way. He did bring that point up. He did not say anything about Cooper being around boozing and drinking, and did not ask about Cooper beating a boarding house keeper out of a meal ticket. I know a man by the name of McCreary in Mullan; got acquainted with him probably a month and a half prior to June 15th. I disclosed my work to him.

Q. That is another individual?

A. My testimony before related entirely to the City of Wallace.

Q. Oh, you did not think I want to know anybody outside of Wallace?

A. It did not occur to me that way?

Q. Sir?

A. It did not occur to me that that is what you had in mind.

I also disclosed my occupation to Marcus D. Needham, the government witness, and to Mrs. Jack Swanson. This was prior to the 15th of June. Also disclosed my occupation to Marie McGill, Mrs. Needham; I don't know whether Mrs. McCreary's son knew my identity or not. He might have.

Q. So there were about ten people in the Coeur d'Alene country knew what you were there for and what you were doing prior to the eventful 15th of June, weren't there?

A. Yes.

Q. Now you gave McCreary \$500.00 in marked

money to try and get it into Weniger's hands, didn't you?

A. I gave him some money, not \$500.00. It was marked paper money. I requested him to get it into the hands of the city officials of Mullan. It had nothing to do with the sheriff.

Q. Or with Bloom?

A. I believe that I might have done that. I am not certain whether I wanted McCreary to get any money into Bloom's hands. The marked money was only \$50.00. I told McCreary to put that money into the hands of Army Welch and the rest of it in the purchase of moonshine whiskey. There was no discussion about getting any of the \$50.00 into Bloom's hands. We discussed the matter of the possibility of Mr. Bloom accepting money, but we had never gone so far as to arrange to get money to make an attempt to pass it to him. By we, I mean Mr. Needham, or Mr. McCreary and his son and a special agent that was working with me temporarily at that time. The special agent's name is Dene Hickman. I told him to try to buy a city permit with a certain amount of it and the rest was to be spent for moonshine whiskey. The city permit was to be for soft drink license in Mullan. Army Welch made the collections but he did not issue them. We had discussed the matter with Mr. McCreary and his son regarding the possibility of the Sheriff's office being on this racket. By sheriff's office I mean members of the sheriff's force, including Mr. Weniger. We did not discuss getting

money into Weniger's hands with reference to the money that was given McCreary, but did discuss getting marked money into Weniger's and into Bloom's hands. The McCreary I am speaking of is the elder McCreary. I talked about the possibility of getting from the County of Shoshone this amount of money, but it did not seem to be necessary for this angle that we were working on. \$500.00 was talked about. There had been discussion about getting money into the hands of the sheriff's office or sheriff's forces. The \$500.00 might have been mentioned at that conversation, but was not a part of it, connected with it, and absolutely a part of it. We could go as far as \$500.00, that is, get it from the county, if necessary, use that money in obtaining our evidence if we needed to.

Q. Well, whom else were you talking about giving money to besides the sheriff's office in the county government?

A. This system of protection up there was protected whiskey and our object was to get these moonshine distillers and anybody else that was in this conspiracy. There was no other county officer in the sheriff's office that we discussed getting money into their hands. This \$500.00 was to be used on the whole conspiracy, to be spent over the whole conspiracy. No county official had given any assurance for the \$500.00. I talked with the county commissioners, Parker and Woods and Harry Rodgers. Told them we wanted to do undercover work. The commissioners I have mentioned were the two other county commissioners, excluding Mr. Clark. They

agreed to use \$500.00 of the county's money in an attempt to get it into the hands of anybody that was in this conspiracy, any part of it. I discussed partly with them the getting of some of the \$500.00 into the hands of the sheriff's office, but not all of the \$500.00. In the general discussion they told me they had thought of putting up a bootleg joint themselves in order to find out why so much liquor could be sold in that county and who were getting the money. They further said that the judge had a confidential fund of a thousand dollars and they thought they could use their influence with Judge Featherstone to get some of his confidential money and that was the money we used. I talked to more than one county commissioner. I was only in two joints in Shoshone County in all the time I was there. I had not completed our work on the 15th. I mean when I said to Mr. Weniger, "I think I have made enough progress so that I can now identify myself", on the morning of the 15th that our work had progressed to a sufficient point where we knew enough of the under current in the underworld that we could come out from undercover and proceed to deal with private citizens on equal grounds with them, and with this information, and unravel this conspiracy.

Q. So that on the 15th when Mr. Weniger called you over there you were ready to reveal your identity not only to Mr. Weniger but to the private citizens, as I understand you?

A. Yes sir.

up his duties as chief of police on November 9, 1928; that on assuming these duties—he stated that he had also served as night watchman before this, night police; that on assuming his duties as chief of police there was a list on the desk, a list of names. He said he thought there were about a dozen names, in the handwriting of Ex-chief of Police Needham; that he was quite familiar with the system of collecting in Mullan; that he took this list without any instructions from anyone and started out to get additional names as contributors; that he solicited for this list houses of prostitution, card rooms, pool rooms and soft drink establishments; that he usually made the collections of the city license about the first of the month each month, and that he collected the so-called donations about the 27th of the month, that being the miners' payday; that in some few instances these donations were paid the first of the month, but usually collections were about the 27th; that he went on vacation in the summer—he stated; too that Mr. Hull had warned the board about the difficulties that they might get in if they did not discontinue their collections, but that the board seemed to think there was no danger in continuing; that he took a vacation during the past summer and returned from that vacation on the 26th of June, 1929, and that a few days afterward, after his return, probably along about the first of July, shortly after the first, that Mr. Harwood told him that he should make no more collections. He stated, or rather asked the question—that he had simply been carrying out orders, and that he wondered if he would be brought

into the matter along with the councilmen. He stated also that he realized, he now realized that both the State and Federal laws had been—that these laws had been broken, and that—then he stated that he wondered if he would be brought in with the councilmen.

CROSS EXAMINATION

BY MR. POTTS:

I went to Mullan to make an investigation and to get statements from the village officials. We interviewed and got statements from all of them. They were reduced to writing but not signed. I have narrated the statements. We told Mr. Harwood that we were there to get information concerning this alleged conspiracy; told him we were federal officers who had been investigating the conditions in Shoshone County for some months; told him any statement he would make could be used against him. He made a full disclosure of the conditions as he remembered them. He talked very frankly; said he was not conscious of any wrong doing and that there was nothing he desired to hide or keep from the federal government. The conversation I have related with him is practically verbatim. I have made notes and have memorized my notes and have consulted my notes. We told Mr. Huston when we approached him what we were doing and that we were investigating the liquor situation in Shoshone County and that anything he told us might be used against him, and he made the statement as I have related. We put questions to him and

got answers as the result of these questions. We did not ask him many questions. He volunteered most of the information. Huston said he had had enough of it and did not want any more. Huston told us what the license plan was when he referred to the list. He referred to the first meeting of the Board of Trustees, in 1923 or 1924; he referred to the license ordinance, the new ordinance that took the place of the old ordinance which prohibited the sale of liquor and the new ordinance covered all lines of business.

Welch said he had collected money from houses of prostitution pool halls, card rooms and soft drink establishments. He said it was either license or donations. They all said the money was turned into the village treasury. We spent several days interviewing these men.

EARL McCREARY, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Earl H. McCreary; reside in Mullan, Idaho; am manager of the Bilberg; have been since the 8th of June of this year; running it in connection with my father, H. W. McCreary. He is in the jewelry business, hotel business and real estate business in Mullan; I know Charles Bloom, the defendant; he called at my place of business in the Bilberg Hotel the latter part of August or first of September and talked with me on that occasion. He said there had been a complaint made against my running a gambling game, and he said he

had orders to come and close it, and keep it closed. I said, "Charley, this is nothing more than a rummy game for fifteen cents a corner. It is not hardly a gambling game." Well, he says, "You are cashing hickies in it, aren't you?" I says, "Yes, sir, part of them, and part of them are used in trade for merchandise." Well, he says, "you will have to close it." Well, I says, "I don't hardly think that is fair", I said, "The town has been running quite wide open for the past few years, they are running whiskey joints, they are selling whiskey over the bar in several places, they have been running the jewelry punchboards, and that hurt the jewelry business and we never complained." I said, "We never complained much against any of these bootlegging places," and I said, "one bartender was in here not long ago and told me that he took in one hundred and seventy five dollars on the 4th of July, and he has told me of other days he took in large amounts of money," and I told him, "I don't think it is fair for you to close me down and let those run." I told him, "Why don't you go out and close these places up? Why are you trying to close my little rummy game?" Well, he said, "I am not running the county. I have got to do as I am told." Well, I said, "if I don't close, what are you going to do about it?" Well, he said, "Mr. Weniger said he would have a warrant issued for you." Well, I said, "In the event I don't close and there is a warrant issued for me for running the rummy game, I will make it pretty tough for those slot machines and the bootleggers and gamblers from now on."

Q. And did not care who knew it?

A. No. Not then.

Q. You were all through keeping under cover, such under cover as you had kept, weren't you?

A. Yes sir.

I might not have told anybody but I was practically ready to come out from under cover on the morning of the 15th.

Q. How about the 13th, were you practically through on the 13th?

A. "Well, a day or two anyway would not make much difference neither." I had gotten two affidavits that I wanted on the morning of the 13th; did not get any more on the morning of the 14th. I would not say that my work was practically completed on the 13th. The thing that occurred between the 13th and the 15th that made it desirable to let myself be known was these detectives in there did not look right to me. That occurred.

MR. NUZUM: Q. Now, Mr. Man, did anything occur between the 13th and the 15th that made it more desirable or more feasible for you to announce yourself?

A. I cannot say that it did.

I was not drunk in the lobby on the evening of the 13th in the presence of the night clerk and Mrs. Gearon. I know who you mean by the night clerk. I did not go to Mrs. Gearon's apartment on the night of the 13th and give her a drink. I was not drunk and sick in my

room for two days prior to the 13th, at the Ryan Hotel. I was not sick in my bed at any time there. I was not confined to my room for two days, and Cooper did not feed me with whiskey that he took in there, during that time.

D. A. SLOAN, a witness called on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is D. A. Sloan; my residence, Denver, Colorado; am special agent for the treasury department Bureau of Prohibition. I am acquainted with R. J. Harwood, defendant in this case; first made his acquaintance on Monday, October 21, 1929 in his place of business, the Harwood Drug Store at Mullan. I had a conversation with him as follows: Mr. Harwood stated that he had nothing to keep from the Government; that he was elected as a member of the board of village trustees in April, 1923; that at that time there was a deficit in the village treasury of between \$8,000.00 and \$9,000.00; that the matter of this deficit was taken up in the city council meeting, and that the idea of raising revenue by the licensing of houses of prostitution and booze joints was one method suggested of raising funds for the city so that there would not have to be an additional tax levy. He stated that a committee was appointed consisting of two citizen members, and three

members from the city council; that this committee was instructed to interview the merchants, business men of Mullan, and get their feeling toward this new system of licensing; that this committee reported back to the village board and stated that they had met with little, if any, opposition to this plan. That Mr. Gyde, who was then city attorney, was instructed to draw up an ordinance which would classify the businesses and would fit into this plan of licensing. That a list of names was prepared showing the places to be solicited together with the amount they were to pay. That this list included houses of prostitution, card places and booze joints. That this list was handed to the Chief of Police with instructions for him to make these collections and turn the money in to the City Clerk. Mr. Harwood stated that all of this money so collected was then turned in to the village treasury; that all the moneys had been collected by the Chief of Police except in a few instances where they were paid direct to the Village Clerk; that they had been warned, that the village board had been warned, by Mr. Hull that this practice was illegal, but that the city needed the money and that they were more interested in getting money into the treasury than they were with the source from which it came. That this practice of making these collections was discontinued in July, 1929, and that Mr. Harwood instructed the Chief of Police to not make any more collections.

I know Mr. Huston, George Huston, the defendant. I met him on October 24, 1929, at his home in Mullan. I had a conversation with him, as follows: Mr. Huston

stated that he was elected a member of the village board in April, 1927, and served until April, 1929. That in the spring election of 1929 he refused to have his name considered for reelection because he had had enough of the administration and did not want any more of it. He stated that he knew little about the licensing system when he was elected but that he had rumors concerning the same. That he was present when Mr. Hull gave warning to the board that if those collections were not discontinued, that the board was very likely to get in serious trouble. I asked why this warning was not heeded, and Mr. Huston said that the village was badly in need of money and that if those collections had been discontinued at that time they had just as well turn the town back to the Indians. He figured that they had had warning more than once from Mr. Hull, and that it had been several months since he had been a member of the board, but when he heard of this investigation that was being made he had expected to be dragged into it; that he felt that they had not done anything wrong even though they might have violated some of the laws of the land, because all the money that had been collected had been put into the city treasury, that there was no personal graft in connection with it.

I know the defendant, F. O. Welch. I made his acquaintance early in September, 1929 in the city hall at Mullan. I had a conversation with him in Mullan the first of November, 1929. The first of November, 1929 I had an interview with him in the Bilberg Hotel in Mullan, as follows: Mr. Welch stated that he had taken

I can tell you what the game was, then it would be up to somebody else outside of me to say what the game was. They were playing a game called rummy, and if you lost, you lost fifteen cents. That is all they were playing. There was no such game there as panguinga. My boy was not playing panguinga whenever anybody wanted to play it. I am positive. I used to go over there every evening, but I was not real familiar with what was going on there at all times.

Q. Well, you did know that he was running a rummy game and taking off money from the kitty and putting it into your pocket, didn't you?

A. Well, he was running a rummy game.

Q. And you knew he was taking a rakeoff and putting it into your pocket, didn't you?

A. I suppose he did it in the deal. That went into the business, I guess, without any doubt. I don't know that that is gambling.

Q. You don't know that when you play for money and have a kitty that that is gambling?

A. Well, they are playing it in a lot of places.

It would not be gambling in Mullan for fifteen cents. I do not know when you reach the gambling stage at Mullan. I do not know how high it would have to be. I would not say that he was running a gambling game. I knew, of course, what game he was running and Weniger told me if the boy did not close the game he was going to take him down and said, "If I take him down, it will be too bad for both of you." I ran

a gambling house in Mullan years ago. I understand exactly what they call gambling in Mullan. I do not know if gambling in Mullan is a different occupation or dissipation from what it is in Wallace because I don't know anything about Wallace. I know what black jack, panguinga and twenty one are. I have watched them, and when Weniger told me about the game I knew what he was talking about and he told me if the boy did not close it he was going to take him down. When Weniger was there the boy had not opened the game; it had not been opened or had closed up for the night or something else. This was after I had been given money to slip to Weniger. Rogers gave me fifty dollars in June or July and asked me to buy a beer license for the Bilberg to sell booze from Army Welch. I did not do it. This money was to put into anybody's hands that would accept it. He did not instruct me to get it into Weniger's hands. He did not say anything about Weniger. I told Weniger and Bloom that they had been to see me, and they were on their trail and going to trap them.

Q. Didn't you tell them that they had given you \$500.00, and that Rogers had taken the numbers of the bills?

A. I didn't get \$500.00. I had \$50.00. They had taken the numbers of the bills. I believe I did tell them that they had taken the number of the bills. Rogers did not mention Weniger's name, but he gave me to understand that any of them that would accept,

any officials, that money, it would be all right, and for me to pay it over to them, and they would get it in a way so that they would have the drop on the officials. I don't know that they expected to arrest them. I do not know that the money was marked. I take it at the time that the money was marked. I never would have used it for anything else.

I have been around gambling since I was born. I have been around where gambling was. I never worked in a gambling house.

Q. You owned one at Coeur d'Alene?

A. I do not think you would call it a gambling house. I had games, and had a dry goods store, and pool table.

Q. And you played games there for money?

A. The same thing as they are operating there yet. I sold out to the people who are running it now.

Dan Le Seur was dealing there in the Bilberg when we had open gambling, when I had. From the 8th of June until the last of June we paid to run gambling there and license to run the slot machines. I would not say I owned them. I owned the building. I wouldn't say that I owned the games exactly. Other people had money in there. The kid had his money. We run the time out that we had paid for, and Bloom came to us and told us to close up, move the slot machines, and clean the place up, that he had found out that the federals were going to come in and he made us clean it up. Bloom told us to close. I do not know as he

told me. He told the kid to close up, and made us pack the machines in a back room, stored them. This must have been in the very late part of June because they run the gambling through the Hunter payday, which pays on the 24th or 27th of the month. We run through that. We was closed on the 4th of July. I do not know how long they had been running panguinga and the hickey games when Bloom told us to close. The hickey games had been running ever since they had closed wide open gambling. These hickeyes were redeemed for merchandise or cash.

WILLIAM BARRON, a witness called on behalf of plaintiff was re-called for further cross-examination:

CROSS EXAMINATION

BY MR. NUZUM:

Q. I show you Exhibit No. 19, marked for identification, is that the affidavit you made for Mr. Horning?

A. That is the one I signed.

Q. Do you remember any portion of it?

A. "Some of it." I did not read it all. I did not read the portion which says that when I left Fitzgerald's office and went down on the street I met this girl I was mad at and she bawled me out. I do not know if I was mad at her. I did not read that portion of it.

I went to the hotel and when I came from the hotel back uptown, she was on the street when I came in front of the school house. I do not think I read that

Q. Was anything said by Mr. Bloom or Mr. Weniger to you?

A. No.

We did not take out any license for running the hotel. It was paid when we went in. It was thirty six dollars license for running the hotel and lodging house and pool table and so forth included. We never took out a soft drink license; have not paid any sums for gambling privileges.

CROSS EXAMINATION

BY MR. NUZUM:

Q. When did you start running the gambling privilege?

A. I started the rummy game I should judge sometime in August; have been running there since. It was not limited to rummy; was running it wide open; not selling any booze. We sold soft drinks. There was a bar there. I work alone except I have a swamper. My father and I take care of it. There has been no booze sold ever we took the place over. The gambling is principally the same as is running all over. At the present time there is nothing running. We have run the pan game, rummy game and black jack; no stud poker, draw poker or craps. The house takes off a rakeoff from each of the games, not out of the black jack. Put in with the dealer and take half the pot and split the proceeds. If a man gets black jack, he will put in with the dealer.

and we only take twenty-five cents out for each black jack, and if another man wins the black jack, he takes the proceeds, whatever it might be.

Q. The dealer is you, and that is the house?

A. Yes sir.

We charge twenty-five cents for each black jack besides that and that has been running up to the time that this case started, part of the time, whenever they would play. When Bloom came up I was running a gambling game, a rummy game. We were playing panguinga also. We had opened it and closed it but it was not open at that time. I was running a gambling game. We ran the panguinga game when anybody wanted to play it.

Q. Bloom told you there had been some complaint about running a gambling game, did he?

A. He did.

Q. And you did not deny to Bloom but what you were running a gambling game, did you?

A. I told him exactly as I said before, that I was running a rummy game.

Q. You did not tell him all the truth then, did you, you were running panguinga also, weren't you, when anybody wanted to play?

A. Well, I have, yes sir, but not at that time.

Q. There did not happen to be anybody playing panguinga that minute, but you would run it if anybody wanted to play, wouldn't you?

A. I presume I did, yes sir.

He said running a gambling game, and I said, "All right. All I am doing right now is running a rummy game.

Q. And you said that last fourth of July somebody had sold one hundred and seventy five dollars worth of booze and therefore, "I think you had ought to let me run a gambling game." That is about the size of your argument, wasn't it?

A. Just about.

Q. And he told you that his orders were that you would have to close?

A. Yes sir.

Q. Did you close?

A. "I did." I did not like it because he closed the game.

H. W. McCREARY, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is H. W. McCreary; I reside at Mullan; I am in the jewelry business. I am acquainted with the Bilberg Hotel there and have a son running that. I went in there about the 10th of June, 8th or 10th of June of this year. Weniger and Bloom came to my jewelry store about the first of September, 1929 about ten o'clock in the morning. I had a conversation with

Weniger and Bloom on that occasion. Weniger and Bloom both came in and I was behind the counter waiting on some customers, and I see they were waiting around I presumed to see me, so I stepped on the outside and asked Mr. Weniger if he wanted to see me. He said he did. So I asked him what it was about. He told me he wanted to know where my son was. I told him that he was over at the hotel, and, "I guess he is in bed yet." And then I asked him if there was anything that I could do. "Yes", he said "I might, and I talked about it. He told me, I think he said he had sent the deputy over the evening before to stop a card game or something, and that my son had got sassy and snotty, and he said, "You will have to stop that", or, he says, "We will take him down." And he says, "if we have to take him down," he says, "it will be too bad for you and him both."

CROSS EXAMINATION

BY MR. NUZUM:

Q. He told you that if you let your boy run a gambling game there any longer that he would have to take him down, didn't he?

A. He told me that if I did not make him quit being snotty and sassy, is the way I understood it.

I did not know what my boy was doing; I had never heard then of the conversation. I knew they were running a kind of a game, whether you called it gambling,

portion of the affidavit which reads as follows: "On the morning of August 7th I met Fitzgerald on the street and went to his office with him and told him that I was ready to leave town. I expected Fitzgerald to pay me off but he told me to come back when Ainsworth was there. I left Fitzgerald's office and met one of the girls on the street whom I had turned in to the Federal officers."

Q. The words, "I had turned in to the Federal officers", did you read that portion?

A. "I didn't." I did not state that to Mr. Horning. I met a girl on the street, and she bawled me out. I did not read that portion of the affidavit which says, "She bawled me out and called me a son of a bitch." But that did take place. She did bawl me out and call me a son-of-a-bitch. I told Mr. Horning that she had done that.

Q. "I walked away from her, but met her again a little later and she called me the same name." Did you tell that to Horning?

A. I tell him, Horning, just what happened, took place.

Q. Did you tell him that that happened?

A. I must have or else—

Q. That is a fact?

A. I told him some stuff in that statement.

A. It happen that way—it happen—I tell him the way it happen.

Q. She bawled me out—I gave her a push and she

fell or stumbled from the sidewalk to the street.” Did you state that to Mr. Horning?

A. I do not think I state that way. I didn't say “pushed”. She reached for me, and to protect her hand from getting on me I took her hand.

Q. You didn't tell Horning that you pushed her?

A. No.

Q. You are positive of that?

A. “Sure.” I stated in the affidavit the sheriff saw the whole trouble and came over and arrested me and put me in jail. That is my signature. The sheriff was sitting on the steps, across the street from this girl and she called me a son of a bitch in a pretty loud voice and she called me a bastard, and when the girl fell on the sidewalk of course the sheriff came over and took us both over; arrested me but didn't arrest the girl. I didn't see what happened to the girl. She never got into jail.

With reference to Exhibit No. 19, I started to read here on top and then I was too sick. I did not read very far down; just about half way here, the top words. I didn't read any more at all. Horning did not read it to me. I told Horning there was a man by the name of Ainsworth I had talked to in Mullan. I told him I had gone to Wallace with the object of seeing Fitzgerald. I told him that Ainsworth and I went to the place where Fitzgerald's office was and that Fitzgerald was not there. I told him that I went to Fitzgerald's house and had a talk with him. I did not tell Horning

that Fitzgerald suggested I go up there and buy drinks from the girls, but I did go up there and buy drinks from the girls. I suggested it to the Federal officers. Fitzgerald did not suggest that I could buy drinks and turn the girls over to the Federal prohibition officers; he didn't state to me to buy drinks. I did not know Johnson before that. I did not know who he was. I told Mr. Horning that the following day Ainsworth told me Fitzgerald and Johnson wanted to see me in Wallace. I told him that Ainsworth brought me in his car to Wallace, and he did. I told him I went to Fitzgerald's office and found Fitzgerald there with Johnson and Webb, prohibition officers. I did go to Fitzgerald's office and find Johnson and Webb, prohibition officers, there. I did not tell him that Johnson, Webb and Fitzgerald, all three of them, asked me if I would go through with the arrangement. Fitzgerald never asked me if I would do that work. Johnson and Webb did. It was not in Fitzgerald's presence. He wasn't there. When that was suggested it was in the hotel room. Johnson and Webb took me to the hotel room and instructed me how to work. I went back to Mullan on the stage and I told Mr. Horning that. I told Mr. Horning I was going to Coeur d'Alene. I told him what I had done and I told him I was going to see Johnson and Webb and I told that to Mr. Horning when he got up this affidavit. I do not think I stated to Mr. Horning that Fitzgerald told me it would be best to go to Coeur d'Alene and make the

affidavits that I had bought liquor from the girls in Mullan. I met the Federal officers in Fitzgerald's office. I didn't need no advice to go over there from Fitzgerald any time. After I met the Federal officers they told me what to do without me getting advice of Fitzgerald. I did go back to Fitzgerald's office to see him. He was a brother Moose. I went to tell him I was going to Coeur d'Alene. I do not remember what he said. He didn't tell me to get my trunk out of town, but I did; nobody told me to. I did go to Coeur d'Alene and paid my own expenses. I did not state to Mr. Horning that Fitzgerald wanted me to get some dope in Wallace. He did not give me two dollars. I did not tell Horning so. I told Horning that when I got to Coeur d'Alene I looked up Johnson and Webb and signed the affidavit as to the liquor I had bought from the girls at Mullan and that was true. I told him Johnson sent me back to Wallace with the understanding that I was to go ahead with the work in Wallace and Kellogg. Webb sent me back to Wallace and Kellogg and I told Horning that. I did not tell Horning that Fitzgerald instructed me to send the trunk out of town. I wanted it out of town so when the raids started I could get out of town. I do not think I told Horning that. I may have. I do not think so. I told Horning that I met Fitzgerald on August 7th on the street. I told him I went to Fitzgerald's office. I told Fitzgerald and Horning both that I was ready to leave town. I did not tell him I am expecting Fitzgerald to pay me off. I told Horning I had met Fitz-

gerald and told him I was ready to leave town. I do not know how he stated it in the affidavit. I did not tell Horning that I expected Fitzgerald to pay me off or that Fitzgerald said anything about coming to the office later when Anderson was there. I signed this Exhibit No. 19. I do not know whether he said anything to me when I signed my name to the affidavit.

ANTHONY MCGILL, a witness called on further cross-examination, testified:

CROSS EXAMINATION

BY. MR. NUZUM:

I am not a married man now. I was divorced but I have not got my complete divorce yet. My wife got her divorce August 23rd. I have not got married since the divorce. I registered at the Rollins Hotel at Sandpoint as A. H. McGill and wife on December 6th. It was not my former wife. It was another woman. Certainly I did not stay with that woman. At the hotel at Clarkspport on December 26, 1929 I registered as A. H. McGill and wife—November 26th, with the same woman. She was not my wife. I got a room for the lady, but not for the purpose for which you fellows are trying to put it on, and registered as A. H. McGill and wife in both instances, for Room No. 11, December 6th and on November 26th. I went up and slept with another party that night. I went down and got the room and then went back over with another party at Sandpoint. It was Mr. Murphy.

Q. He wasn't the husband of this woman you registered for?

A. No sir.

RE-DIRECT EXAMINATION

BY MR. RAY:

Q. With reference to the hotel registration at the hotel at Clarks Ford, Idaho, what are the facts?

A. We wanted—she wanted to go over to Montana—When we got over there the car went on the bum, and we didn't have very much money left, so I says, "Well, we will go up and get a room and I will—we will get a room together because we got to cut out some expense. On December 6th, at the Hotel Rollins, when we got back we put that down just for fun, and then I went back and stayed at Murphy's home. I got people to prove it. Those are all the facts in connection with that. I go steady with this lady all the time.

RE-CROSS EXAMINATION

BY MR. NUZUM:

Q. When you registered at Clarks Fork you registered as man and wife I assume as a matter of economy?

A. I sure did.

Q. You didn't have money enough to take two

rooms, so you thought you would save a little by sleeping together?

A. We sure did.

Q. When you got back to Sandpoint on the 6th, you had plenty of money, and you didn't need to economize?

A. I didn't have plenty of money—I had borrowed some.

Q. You didn't need to economize on the 6th.

A. No.

Q. You registered as man and wife for fun?

A. Yes, joking when we registered.

HELEN GRANT, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Helen Grant. I reside in Walla Walla, Washington. I was in Mullan, Idaho in 1928, just before Thanksgiving last year. I went to Bertha Strom's upon my arrival there. She is a defendant in this case. I hustled at Bertha Strom's place; stayed there several days. Liquor was dispensed there by Miss Strom in connection with the business I was doing. I then went to Bedella McKinney's and did the same business. I then went to Babe Kelly's, the defendant in this case; stayed there several months, hustling there. There was whiskey sold in connection with the business conducted

in that house by Babe Kelly. I know Hartcourt Morphy, the night patrolman, the defendant. I know Army Welch, chief of police of Mullan. I paid money to both Welch and Morphy. Needham was not there. I was known as Helen Grant while I was in Mullan. I do not remember signing any paper or list. I paid Mr. Welch \$15.00 a month, usually \$7.50 every two weeks. I did that for the several months I was there. Mr. Morphy gave me notice of impending raids several times. I wouldn't say raids, not about raids, he told us about under cover men, stool pigeons; it wasn't about raids.

CROSS EXAMINATION

BY MR. NUZUM:

I live in Walla Walla, 410 North 6th with my son, who is eight years old; lives with me in a private residence. He was not with me in Mullan; he was with a private family.

When I came to Mullan I came from all over the country. I came from Hamilton, Montana to Mullan; had been in Hamilton about a year, keeping house. I came to Mullan because I had to make a living for my youngster. I intended to get an honest job but I couldn't find one. I got there a few days before Thanksgiving; went to Bertha Strom's the same evening I arrived, because I did not have any money. I went there to get some money from her because she

was a friend of mine. I do not remember whether I commenced work that night. I know I did the next night. I stayed there three days. I do not remember; it might have been longer. I did not see either Welch or Morphy while I was there. I went from Bertha Strom's to Bedella McKinney's; stayed there a month or so. Went to Babe Kelley's. I stayed there several months. I was in Mullan from a few days before Thanksgiving in 1928 until about April 28, 1929. After that I was all over the country, just wandered around. I first saw Welch at Bedella McKinney's. I asked Army Welch if I had to pay for protection, and he said, "Don't you call it protection, you call it donation." About a week or two later he came and collected some money. He had a paper. I saw it but did not see what was on it; did not sign my name. I saw him write on the paper, but I did not know what he wrote. I saw him pretty near every night and he bawled me out. He presented the subscription paper nearly every two weeks. If I did not pay him he told me to get out of town. I paid the money and he put it down on the paper and that is about all the transaction I had with him. Morphy did not collect any payments from me. I never had any trouble with Morphy. I was staying at Babe Kelly's when Morphy told me about under cover men. He just gave me a description of the undercover men, stool pigeons; described them to Babe Kelly and me. Said they were in Mullan. One of them came to the house that answered that description. That is the only one I re-

member. I do not know whether he was an undercover man or not. The person who came there answered the description of the party who was said to be an undercover man. When I was there I was accused of stealing from one of our patrons. Army Welch accused me.

CROSS EXAMINATION

BY MR. BANDELIN:

I am Mrs. Grant. I lived in Montana prior to coming to Mullan, and had lived in Mullan some years before. Was married when I lived there. I worked for Babe Kelly and Bertha before. I was rustling before that. I had been rustling in Montana but did not come back to Mullan for that purpose. I went to Bertha Strom's because I did not have any money to eat on; I stayed there three or four days.

Q. Now, I will ask you if it is not a fact that Bertha tried to straighten you up, and you insisted on going uptown and getting drunk, and she told you that if you could not stay sober she would not have you around there?

THE COURT: Did that happen? Answer the question, Mrs Grant, and let us proceed.

A. Oh, I don't know as I got drunk. I had taken a few drinks.

THE COURT: No, that is not the question. The question is, did Mrs. Strom tell you that if you did not

quit getting drunk that you could not remain at her place?

A. I don't remember.

I left in about three days. (I have not been friendly to her since,) but did not leave on that account. It was because I did not make anything rustling. I am now living in Walla Walla; am a waitress. I work at Bennett's place. My correct name is Helen McKinney.

HAZEL GRAHAM, a witness called on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Hazel Graham. I am married, living in Wallace. I went to Mullan in 1928 to the Marble Front. Babe Kelly was running the place. I was a prostitute. I was known as Hazel Harris. I knew Army Welch and Morphy, the officers of Mullan. I paid Army Welch while I was at Babe Kelly's \$15.00 a month each month while I was there. I did not see any liquor dispensed. I had nothing to do with the selling of liquor. I did not know any other police officers of Mullan. I stayed there until after Christmas, 1928, and I left Mullan. That is the only house I worked in in Mullan.

CROSS EXAMINATION

BY MR. POTTS:

Welch was chief of police at the time I was there and

when he came there he presented a subscription list to me and I signed it and put down the amount that I paid. He brought that each time.

BEDELIA McKINNEY, a witness called on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

My name is Bedella McKinney; I reside at Bend, Oregon; I am married; been living there about seven months. I went to Mullan in June, 1928; stayed there about ten months until about April, 1929. I sold booze and ran a house of prostitution. I know Army Welch. I paid him \$25.00 for running a house of prostitution. I was known as Bedella McKinney. I got the liquor at the Smoke House that I sold. The name of the place I was running was the Pastime. I got whiskey at the Hunter Hotel from Walter Johnson, a defendant in this case. I paid \$25.00 a month each month during the period I was running the house. Helen Grant was working in my house the time I was there.

CROSS EXAMINATION

BY MR. POTTS:

Welch presented a subscription list to me to sign, but I did not sign it. I did not write anything down. Each and every time I made a payment he made nota-

tion on the list of the payment.

WILLIAM STEELE, a witness called on behalf of the plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is William Steele; I reside at St. Mary's, Idaho. I have lived there for eighteen years. I am Chief of Police there. I know R. E. Weniger, the defendant. I saw him in St. Mary's during May or June, 1929. Mr. Chapman, one of his deputies, was with him, Weniger had a conversation with me with respect to liquor or prohibition.

Q. Did the defendant R. E. Weniger, make any statement to you there at that time about what he would do to any of his deputies in connection with that work, prohibition work?

A. Mr. Weniger did, in a way, yes sir.

Q. What did he say?

A. He said that if he had a deputy that would arrest a bootlegger, he would can him.

CROSS EXAMINATION

BY MR. NUZUM:

Q. What was his manner when he said it?

A. What was that?

Q. What was Weniger's manner when he said it?

A. Well, we had been joking there.

Q. And you had said something about bootleggers, hadn't you?

A. We had been talking about bootleggers, yes sir.

Q. And you had been joking about it, hadn't you?

A. Yes sir.

Q. And you did not take this as a serious remark at all, did you?

A. At that time I did not; no.

Q. Just joshing back and forth?

A. Just joshing, back and forth.

RE-DIRECT EXAMINATION

BY MR. LANGROISE:

Q. What led up to this; had there been any conversation or any statement by you about conditions in Shoshone County to him?

A. Oh, I could not state word for word everything that was said there, but Mr. Weniger I believe brought up the subject himself in regard to it—I would not say—I believe that that is true—it came up over a certain place there in town. It came up over a little joke there and one word led to another, I was joshing Mr. Weniger about what I had heard of the conditions of things over in Shoshone County there, and he was joshing me about different conditions in Benewah county, and it came up in a joking way all right.

RAY DELAMO, a witness called on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. RAY:

My name is Ray Delamo; I reside in Mullan, Idaho. Went there about Sept. 1927. I know R. J. Harwood, the Mayor at Mullan; I rented my house from him, the place known as the Cabin, about a block and a half from his place, his drug store. I paid him \$50.00 a month for two rooms. I was selling liquor for a little over a year. I paid the Chief of Police, Needham, \$25.00 a month. Needham was chief first and then Army Welch. I was tipped off by police officers in Mullan. The night policeman, Army Welch, and Chief Needham tipped me off. At one time I got rid of my liquor. I threw it out, and Mr. Welch came along and swept the glass up. I sold beer and whiskey. I bought my beer at different places in Mullan and the whiskey also. I paid this monthly rental of \$50.00 to Mayor Harwood in person at the drug store. Harwood was in my place of business when they came there to take up a collection for a ball game. Some of the councilmen were with him. I went to Harwood to pay my rental from month to month.

CROSS EXAMINATION

BY MR. POTTS:

I went to Mullan in September, 1927. I went to May-

or Harwood to rent the house. There had been another woman there before and the house was turned over to me. I made arrangements with the tenant and went to Mr. Harwood and completed the arrangement and then afterwards went to him and paid the rent. He was never there but once and that was soliciting for funds for baseball. This cabin was a building in the principal business block of Mullan. I occupied it a little over a year, until about the 6th of September, and got married on September 8th; did not occupy it after that. I also ran a house of prostitution. Welch presented the subscription list and my name was on it and the amount and I read my name there and that occurred in each instance. I was warned about undercover men in town. I threw the liquor out. I threw it outside of the door in the yard in front of the house. I did not look to see where it went. They went into the street, everything, because I heard them crash. Army Welch got two brooms and swept the debris out into the street; that was shortly before I left the place. Army Welch got the broom from my house, and the speed cop was there at that time. This was while Needham was chief of police. I made the payments of \$25.00 a month to Chief Needham. I never made a payment to Welch. I was unfriendly to Welch over killing a dog and I have been bitter against him ever since. My name was Ray Macklin, while I was there and that was the name on the subscription list.

THE COURT: Call the next witness.

MR. RAY: I think the government is ready to

close, Your Honor.

MR. NUZUM: If your Honor please, before they close I may have a question to ask Mr. Rogers.

THE COURT: Mr. Rogers is not contemplating leaving any way.

MR. RAY: Not so far as the government is concerned.

THE COURT: Well if you decide there is some question you want to ask him you may call him back later; with that exception does the government rest?

MR. RAY: The government is ready to close and does so.

MR. NUZUM: As to the defendant, R. E. Weniger, I move the court to dismiss the case, because there is no evidence in the case tending to connect R. E. Weniger with the alleged conspiracy as charged in the indictment. Secondly, no evidence in the case which in any way tends to show that the defendant R. E. Weniger in any manner violated any of the provisions of the National Prohibition Act. Thirdly, that if the evidence showed anything, it shows mere passiveness on his part in respect to the National Prohibition Act and nothing of an active character in that respect.

THE COURT: There is no use for counsel to argue that motion, and it is denied.

MR. NUZUM: Exception. I make the same motion with respect to the defendant Charles Bloom.

THE COURT: And that motion is denied.

MR. NUZUM: Exception.

MONDAY, DECEMBER 23, 1929.

At the request of defendants Weniger and Bloom, the case was reopened for the purpose of putting impeaching questions to three witnesses, and the following proceedings were had:

A. H. MCGILL, upon being recalled, testified as follows:

CROSS EXAMINATION

BY MR. NUZUM:

Q. Do you know Lucile Anderson?

A. Who—Lucile Anderson?

Q. Yes.

A. I do.

Q. Did you have a conversation with her in your dining room at Mullan in which you and your wife and Miss Anderson were present in April, 1928?

THE COURT: Go ahead and finish your question.

Q. (Continuing) I will ask you whether or not in a conversation in your dining room, in April, 1928. Lucile Anderson, your wife and yourself being present, you didn't state—in that conversation, that you wanted Bloom to collect some money that was sup-

posed to be owing to you from Charles Fond, and that Bloom would have nothing to do with it, and that you then said that "You are going to fix that son-of-a-bitch Bloom", and that "you were going to raise a lot of Hell, and that you would be the man to give testimony against Bloom and Weniger", or words to that effect?

A. I never did.

THE COURT: That is all. Call your next witness.

RICHARD E. COOPER, upon being recalled for further cross-examination, testified as follows:

CROSS EXAMINATION

BY MR. NUZUM:

Q. I will ask you if during the period you were stopping at the Ryan Hotel, between April and June, 1929, you did not get so drunk that you puked all over the room, and that you were requested and did remove the vessel that contained the vomit yourself?

MR. RAY: I think that should be made more definite—he says between April and June.

MR. NUZUM: I cannot fix the exact date—it was during the time he was there.

THE COURT: He may answer.

A. No sir.

DONALD B. ROGERS, upon being recalled for further cross-examination, testified as follows:

CROSS EXAMINATION

BY MR. NUZUM:

Q. You answered on the stand before that you knew Mrs. Gerrin, the elderly—

A. Yes.

Q. I will ask you if during the evening of June 13th, 1929, in Mrs. Gerrin's apartment, in the Ryan hotel, at Wallace, Idaho, you had this conversation, that you had about a half a pint of whiskey and you asked Mrs. Gerrin to have a drink, that you stayed about an hour or an hour and a half, and in that time if she didn't ask you what your business was, she saying that she didn't think you were a mining man or a lawyer, and if you were not a Federal agent, and that you said you were—words to that effect?

A. I was not in her apartment on the night you mention.

Q. I am asking you whether or not you had that conversation?

A. No sir.

MR. NUZUM: Call the lady.

(Witness Gerrin steps in court room)

Q. Are you acquainted with this lady?

A. I am.

Q. Do you recognize her as Mrs. Gerrin?

A. Yes.

Q. I will ask you if during the time you were at the

hotel, the Ryan Hotel, it being April until June, when you left, that on one day you did not ask the lady who is here, Mrs. Gerrin, if she had not called you and she said, "No", and you said, "I would have sworn I heard somebody call me 'Don'." She said to you that you had been drinking too much, and you said, "Yes, I have been drinking so much moonshine that I was sort of goofy—" or words to that effect?

A. No sir.

Q. You are positive about that?

A. Absolutely positive.

Q. I will ask you if one day in the hotel during this time you heard Mrs. Gerrin say something about going to Spokane April 18th, and that you came to her and told her that you was going to Spokane and register at the Davenport in your name, and you asked her to call you up and you would have a good time, and if she didn't say to you, "I am not that sort of a girl—you have made a mistake?"

A. No. I had no such conversation.

MR. NUZUM: That is all.

MR. NUZUM: May the motions be considered renewed?

THE COURT: Yes sir, the motions may be considered renewed and denied.

MR. NUZUM: All right. I desire at this time, if your Honor please, to move that the Government be

compelled to elect which of the two conspiracies charged in the indictment they will proceed on. There is first a charge in the indictment, or in one count, to violate Section three of Section 25, and Section 26 of title two of the Act of Congress of the United States National Prohibition Act, and in the same count a conspiracy charged to violate section 1 of title 2 of the Act of Congress known as the National Prohibition Act. I believe, while it is permissible to charge those in separate counts, that it is not under the law permissible to charge two conspiracies in one count, and Mr. Bishop lays down the rule that the proper time to make that objection and motion is prior to the opening of the defense, and therefore, if your Honor please, I move for that election.

THE COURT: The motion to elect will be denied.

MR. NUZUM: Exception.

Thereafter the opening statements of the various counsel for the defendants were made.

The first witness called on behalf of the defendant was **HENRY FOSS**, who testified as follows:

DIRECT EXAMINATION

BY MR. POTTS:

My name is Henry Foss. I reside at Mullan. Idaho; I am thirty-three years old; was born and raised there; I now reside in Mullan with my family, which consists

of my wife and two children. I am an electrician working at the Hecla Mine at Burke; have been for two years and a half. I worked prior to that as truck driver for Shoshone County; also worked at operating in the mill and repair work at the Morning and Hunter Mines. Ever since I can remember Mullan has been called an open town with liquor, gambling and houses of prostitution maintained there. Most of the residents are miners employed in the mines located very close to the town and are largely Finns. I was a truck driver for Shoshone County when I was elected to the Village Council. My home is in Mullan, and I was occupied as a truck driver until July after my election, and after that I went to Burke as an electrician, where I am still working and moved over to Burke with my family in July, 1927, and remained there until August of this year; but I still considered my home in Mullan. I turned in my resignation as a trustee and it was not accepted. I continued to act on the board, attending meetings when I could. The board requested me to remain as a member. I do not believe I attended half of the meetings. I knew of the system in vogue in Mullan of collecting licenses from places of business, including soft drink places, before I went on the board. After going on the board the question of collecting licenses from soft drink parlors or any one else was not brought up at any meeting I attended, and no action was taken with reference to continuing the method of collecting revenue, and there was no discussion of the matter of licensing soft drink places or licensing places where liquor was

being sold. I had nothing to do with the collection or issuance of licenses and took no action with reference to whom licenses should be issued; did not know who they were issued to. The only information I got as trustee about licenses was the monthly report which was read "license receipts so much". That was all the information presented to me. I learned of the donations to the village treasury through the monthly report. I knew before I went on the board that there was always a subscription of some kind being passed and no action was taken after I went on the board at any meeting at which I was present with reference to the continuance of that method of collection. The names that were put on the monthly report to the council were read off as donations. I never agreed with any of the members of the council or any one else that protection should be granted to a person who bought a license or made a donation and never authorized or joined in the authorization of the extension of authority to the police officers, or anybody else, to grant immunity from prosecution or promised protection. I never agreed with any one in Mullan at any time that they should have protection against prosecution for violation of the National Prohibition Law. I did not intend to violate or assist in the violation of the National Prohibition Act. The money collected from licenses and donations was spent on city improvements, a swimming pool, pavement, a new concrete bridge, culvert and bridge, and all general things for the city, new fire trucks. I never got any of the money or drew any salary. I recall the first council

meeting after my election. Needham was appointed Chief of Police. Nothing was said about giving him a percentage on the collection or as to his compensation as chief. The matter of collection was not discussed at that meeting or any list of places that were selling beer spoken of. After Needham's appointment he took the night officer with him and left the meeting just a few minutes after he was appointed.

CROSS EXAMINATION

BY MR. RAY:

I first went to the council in May, 1927. As far as my memory goes back there has been a general practice of prostitution, selling liquor and gambling as a condition in Mullan. I knew about it in a general way ever since I was a little boy. Wheatley and Ristau were elected on the ticket with me. I have known Wheatley since he was a young man and Ristau for about twenty years; have mingled with them at dances; no business dealings with them. I started work as an electrician in September, 1927, my first experience in that line. Before that I was truck driver for Shoshone County in the Mullan District which is all east of Mullan and into the St. Joe. I was in that business for five years. At the regular session of the trustees the treasurer submitted a monthly statement of the financial condition of the village for the month passed, showing the various places where revenue was obtained and the names of the persons

showing the disbursements. The donations were deposited in the current fund from which was paid the general bills and claims of the village. The treasurer's report was discussed to the extent that we were going in the hole. We made no inquiry from whom the revenue or what places the revenue was coming. We were interested in keeping the city out of the hole. We tried various ways to get more revenue, but could not find any. We wanted more tax rating. I never said anything to the police about getting more people or donations on the list. I never heard other members discuss it. We requested the Chief of Police to be present at meetings but did not ask for a report. I was present at the trustees meeting on the 6th of July, 1927 and the minutes of that meeting show the Chief was instructed to make a monthly report. He was instructed to make a report. He was at every meeting and was asked if he had anything to say. He was ordered to report at every meeting. That is, we gave him notice to report so that if anything had to be brought up it could be brought up before the board. We wanted to see if he was doing his work or if there was anything he desired from the council. We wanted to know the general affairs around town. We did not have him there to make inquiry about houses of prostitution, liquor houses or gambling houses. We wanted to see if he was having any trouble around town that needed adjustment by the board. I never brought up anything about prostitution, liquor or gambling houses. I know some of the business houses in Mullan. The first month I was councilman the coun-

cil changed the form of the treasurer's report and after that the treasurer itemized the names and places and amounts appearing on subscription list 2 and 7. It was so as to have the report there when he was read. We might have requested some of the names. I have known William Hedlund for twenty years whose name appears on the treasurer's monthly report, June 6, 1927. I do not know what his business was; do not know what his license was for. He donated \$25.00 to the city to help out with money affairs. I know where the Mullan Pool Hall is located; that name appears on the list for twenty-five dollars, to be donated to the city. Pool was conducted there; I was never around there; never made any inquiry about it; was not interested. The Miners Club, twenty-five dollars was a donation. It was just a congregation club for the men around there. They played pool and cards; had soft drinks; no whiskey or beer that I knew of. I do not know whether a license was issued in May, 1927 or not. I made no inquiry concerning that matter or its donation in May. I know M. F. LeGore. He runs a clothing store. I do not know about his license. I made no inquiry. His name appears on treasurer's report of June 6, 1927, thirty-five dollars, to help the city out. They also played cards and pool there. I know Charles Fond; have known him ten or twelve years. He ran the Bilberg Hotel; they ran a barroom there. I do not know anything about the license and did not inquire. The thirty-five dollars donated in June was to help the money out in the town. I do not know whether he was peddling any liquor in the hotel. I nev-

er went in there. I made no inquiry; I was not interested. I do not know who was running the Central Hotel in May, 1927. I do not know Roy Appleton; I do not know Curley Gardner. I made no inquiry about what kind of business was being conducted at the Central Hotel. I was not interested in that. The Mullan Inn, twenty-five dollars was donated to help get more money into the treasury of the city. I never was around Mullan Inn. There was a bar in there with soft drinks. I do not know anything about the license. Twenty-five dollars in May, 1927 was paid to the Village of Mullan to help out the affairs. It was not for the purpose of gambling in there to my knowledge; nor did Charles Fond or W. F. LeGore pay money for gambling, to the city. I just passed the Yellowstone Cigar Store; do not know Jack Swanson. I know the Stevens Hotel, I do not know Lee Bell. I do not know Josephine Pinazza. There is one name on the donation list I know that was not engaged in gambling, liquor business or prostitution. It is Arthur Rump. He was engaged in the dairy business. I made no inquiry as to what kind of business he was running except that we paid him for milk delivered to the house. Do not know whether he contributed on any other occasion than shown on this report of June 6, 1927 or not; I do not remember whether I was present at the meeting of the council October 5, 1927 or not; do not think I was on November 7, 1927; do not think I was on December 5, 1927; don't remember whether I was on January 1, 1928; I don't remember whether I was present March 5, 1928. I was there at

some of the meetings, but do not recall which ones.

D. E. KEYES, witness on behalf of defendants testified:

DIRECT EXAMINATION

BY MR. POTTS:

My name is D. E. Keyes; I reside at Spokane, Washington; I formerly lived in Mullan, Idaho; left Mullan October 14th, of this year. I had resided in Mullan thirty-one years. I practiced medicine and ran a drug store in Mullan up until 1919, and have owned the Mullan Water Works from 1918 to 1928. I was acquainted with conditions in Mullan during the years I lived there with reference to liquor, houses of prostitution and gambling; it was practically open on all of those all the time. I was in Mullan in the fall of 1923 and winter of 1924 and was present when the board of trustees considered the license ordinance. I was at the meeting at one time called with reference to the license question. My business was included in the license ordinance. I was called with reference to the amount of the license fee. I made donations at different times, one time in particular that I remember. This was in addition to the license. I made a donation at one time of forty dollars. Clark, the Mayor, asked me to do it.

Witness then testifies as to general reputation of Arthur J. Harwood in the community as an upright, honorable and law-abiding citizen being good.

Witness then testifies as to general reputation of Charles Ristau, Henry Foss, Houston and John Wheatley in the community as upright, honorable, law-abiding citizens being good .

CROSS EXAMINATION

BY MR. RAY:

At the council meeting in 1923 or early part of 1924, Mr. Gyde, who was village attorney, read the list over in my presence;; that is the ordinance. It had not been passed on yet. That was the first time it was called to my attention. As an ordinary citizen I got it that Mullan was quite open so far as gambling, prostitution and liquor was concerned. There was no more reason for my knowing than any other citizen of the village of Mullan. The councilmen might have had a better chance to know than I did.

CHARLES RISTAU, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. POTTS:

My name is Charles Ristau; I am one of the defendants and at present a trustee of the village of Mullan; was elected first in 1927. I live in Mullan with my wife and two children; own my home there. I first came to Mullan in September, 1921. I am a plumber by occupa-

tion, working for a firm in Wallace, where I have been employed since about 1919, working principally during the day. I go home to Mullan nights; I first learned of the existence of the license system in Mullan when I got on the council by a monthly report we got every month at the regular meeting. I had nothing to do with the issuance of the licenses; did not know who issued them; had no other information than the monthly report. I did not know about the license ordinance. It was never discussed in my presence. I first knew about the donations to the village treasury from the monthly reports by the village treasurer. I had nothing to do with the subscriptions. The first I knew about the donations was when we got the monthly reports and that is really the only thing I know about it. The reports contained a list of the names with the donations following the name. I made no investigation and no action was taken in my presence with reference to the license system or the collection of money by license or with reference to the soliciting of donations. There was no discussion of the matter at the meeting when I was present. I was present at the meeting in 1927 when Needham was appointed chief of police. Nothing was said at that meeting about licenses or donations. Nothing was said about the list of donations or the various places that were selling beer. There was no discussion of those subjects at that meeting. Right after Needham took the oath of office he and Army Welch walked out of the door and did not come back that evening.

Q. Mr. Ristau, did you ever promise or hold forth

to any of the people that made donations or secured licenses that they would be protected from prosecution or violation of the law?

A. No.

Q. In any way?

A. No.

Q. Did you ever agree that in consideration of payments to the village in the way of subscriptions or donations that they would be protected?

A. No sir.

Q. Did you ever have any understanding or agreement with anyone that any of those people should have immunity from prosecution for violations of the liquor laws, either the National Prohibition Act or the State law?

A. No sir.

Q. Did you intend by anything you did to violate the National Prohibition Law.

A. I did not.

The Village Treasurer's report showed where the money collected came from and I did not get a cent of the money and did not get any salary.

CROSS EXAMINATION

BY MR. RAY:

I knew the general business conditions in Mullan some years prior to the time I became councilman. The business section is about two streets, one block long. I

did not know the operators who conducted the business, as I was in Wallace all day, hardly ever around the town in the evening. The first I knew of the occupational tax ordinance was the first monthly report after I went into the council. I do not know how many soft drink places or soda fountains there were. There were two drug stores. I did not make any inquiry as to the revenue to be derived from the occupational tax, or as to how much license money was being paid by those running businesses in Mullan. The first monthly report submitted by the treasurer showed \$382.50 from city licenses. It did not make any impression on me. I was the youngest member of the council; do not know when I became interested. I attended the meetings, the report was read and I folded it up and put it in my pocket and thought no more about it. I do not know the Mullan Pool Hall or the Miners Club or the Muckers Club. I knew the Bilberg Hotel; did not know the Mullan Inn; knew the Central Hotel and Legore's; did not know the Yellowstone Cigar Store. I have known Legore for probably six years. He was running men's furnishings. I did not know that Legore ever had a license. I made no inquiry as to where the city license money came from as shown by the report. I did inquire about the Legore license. I inquired as to whether the donations were all donations for the building up of the treasury of the town. I did not inquire as to who was making them. I was not interested in it. The list was submitted at the first meeting of the council in June. I did not know about the change in the form of the treasurer's report.

I was not interested in the sources of the revenue. I think I was present when the council budget was considered. I do not remember whether anything was said about the income to be derived from licenses and donations. I think I was present at the special session May 18, 1927 after I was inducted in office. I do not remember any discussion as to the sources of income for the village, or what the revenue was to be. The book shows an estimate of licenses and donations, \$6825.85. I did not make any inquiry and was not interested. I heard the village was in a bad state financially when I came into office. I do not think we spent money foolishly. We donated \$200.00 for the upkeep of the ball park every year and every year maintained a heated swimming pool. I do not know what it cost, something like \$700.00 to \$1000.00 a year. We had money enough to employ a night policeman. We did get special donations for the upkeep of the town. I do not remember about the subscription for the night policeman during September, October, November and December. I suppose the council employed a special policeman. I did not.

JOHN WHEATLEY, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. POTTS:

My name is John Wheatley; I am one of the defendants in this case and at present am one of the trustees of the Village of Mullan; have been about four years. I

was first appointed and later elected in 1927. I reside in Mullan with my family. I own my home there; lived there thirty-three years; am forty-seven years of age and a carpenter; work around the smelters. I work now at the Golconda between Wallace and Mullan. I have been employed at my trade ever since I was councilman. I learned about the collection for licenses when I first became a member of the council and that that was one method of raising revenue in the town. I made no investigation. The system of supplementing the funds by donations was in effect when I became a member of the council. I made no investigation about it and took no action with reference to it. The licenses were collected by the Village Clerk. In July of this year the collections for licenses were discontinued. I knew some of the persons who got licenses. We had no record of the licenses. The only record of donations was the report read by the Village Clerk. I paid no particular attention to it. I did nothing about the licenses or donations after going on the board of trustees.

Q. Did you promise or authorize anybody to, or promise protection to any persons operating under a license, or making donations against prosecution for violations of the law?

A. No, sir.

Q. And did you have any agreement with your fellow members on the board, or anybody else, that there was to be any protection from prosecution by reason of these licenses or donations?

A. None whatever.

Q. Did you agree with anyone that they would be protected against prosecution from violation of the National Prohibition Law?

A. Absolutely not.

Q. Or would have a right to violate the National Prohibition Law?

A. No, sir.

Q. Did you, by anything you did as a member of the Board, or otherwise, intend to violate the National Prohibition Law?

A. I had no knowledge of it, if I did.

Q. You had no such intention?

A. No, sir.

I did not receive any of the funds collected either as salary or otherwise. I was not paid for my services. The money collected was placed in the Village Treasury for general purposes and improvements. I was present at the meeting of the council when Needham was appointed chief of police. There was no discussion of Needham receiving a percentage of the collections as compensation. Right after he was appointed he and Welch left the meeting. There was nothing said about donations or collections from places where beer was being sold. I have no recollection of asking Needham whether fellows on the main stem were paying and never told him to use his discretion in the matter of making collections or the matter of the amount of donations contributed. I gave no in-

structions whatever to Needham in regard to the donations or circulation of the subscription list.

CROSS EXAMINATION

BY MR. RAY:

I did nothing by way of continuing or discontinuing the practice of licensing and collecting donations after I became councilman. The monthly report of the treasurer was read and I did not approve or disapprove of it. I did vote on its approval. I voted for the expenditure of the money received from that source. I first knew definitely that the Village of Mullan was acting illegally regarding the issuance of soft drink licenses and donations in July. Mr. Hull advised us at his home in Wallace in the summer of 1927. I did not consider his advice definite and did not pay any attention to it at that time. It did not raise any concern in my mind and I did not consult any other attorney or any other individual about the matter raised by Mr. Hull. I was not sufficiently informed until the result of this action, after the Federal authorities had become concerned in this matter. I think I was present at the meeting of February, 27th, 1928 when the treasurer's report was submitted. I do not recognize the name Bardella or Helen or Ray Maki. I did not give these matters any consideration. I know the Hunters Hotel. I think it was licensed at that time. I did not make any inquiry about the \$35.00. Do not know whether they were

running a bar. I was not interested. Never got down town in that section. Do not know where the Yellowstone Cigar Store is located. I know the Central Hotel; do not know where they have a bar down there or gambling and did not make inquiry. I was not interested as to whether or not they were on the report of February 7th.

RE-DIRECT EXAMINATION

BY MR. POTTS:

From what Hull said I did not really feel that we were doing anything wrong at that time. I have not any clear recollection of my attitude in regard to his information. Evidently it was not given sufficient consideration.

GEORGE HUSTON, a witness on behalf of defendants, testified;

DIRECT EXAMINATION

BY MR. POTTS:

My name is George Huston; I live in Mullan, Idaho with my family; am a machinist by occupation; have worked at the Federal Mining & Smelting Company at Mullan ever since I quit school, at different times. The last time I have worked six years. I have lived in Mullan twenty-three years. I was appointed to the council in June, 1927. I was not presesnt when I

was appointed. June 6, 1927 was the first meeting I attended. I first learned of the license system in Mullan at that meeting, but I did not know what it was. I took no action with reference to the continuing or discontinuing of the system. The Village Clerk handled that part of it. I learned about the donations, took no action about them. The Chief of Police handled them. I got my information with reference to the licenses and donations from the monthly report; that is all I learned during the term I held office. I made no inquiry.

Q. Did you during your term promise or agree with anyone that any of these persons whom licenses were issued to, or any persons making donations, should have protection against prosecution for violation of the liquor laws?

A. No, sir.

Q. Or protection from prosecution for violation of any laws?

A. No sir.

Q. Did you agree with anyone that they should have protection from prosecution or apprehension for violation of the National Prohibition Law?

A. No sir.

Q. Did you have any intent to violate or assist in the violation of the National Prohibition Law?

A. I did not.

I received no portion of the funds collected; had

no salary. I heard Mr. Sloan, the government witness, testify. I did not state to him I was elected a member of the Board of Trustees in April, 1927. I told him I was appointed either in May or June, 1927. His statement was not accurate in other respects. I told him in a joking way that I would not have time to spend any time in jail. He twisted it around to make it appear that I said other things. I answered all the questions he asked me so far as I was able.

CROSS EXAMINATION

BY MR. RAY:

I served on the fire committee and the park committee. I do not remember exactly. I was interested in fire protection; did not concern myself with houses of prostitution, gambling houses or liquor houses; did not direct my subordinates to do so. There is more fire risk in a boarding house than in a private residence, but I never thought of it in that way. I do not remember instructing the Chief of Police to make special monthly reports but he was at all meetings. I never asked the Chief of Police about bawdy houses, liquor houses or any gambling places. I was not interested as to who any of the individuals might be or the kind of places they were operating. I was interested in the amount of money that the city derived. But I did not know what it was all about. The amount interested me. I did not make any investigation to find out whether it

came from licenses of liquor houses. I never tried to find out the sources and I do not know whether I cared or not.

ARTHUR J. HARWOOD, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. POTTS:

My name is Arthur J. Harwood. I am one of the defendants in this case. I have lived in Mullan thirty-one years; I was about ten years old when I went there; lived there ever since. I own and operate a drug store in Mullan; have owned and operated the store since July 1, 1919; prior to that time I worked in a drum store. My home is on Knob Hill, away from the business district of the town, and I do not go through the business part of town going to and from my store. I work very long hours and only get away from the store during the noon and supper hours. I took my meals at home; worked from eight o'clock in the morning to ten thirty or eleven at night all of the time I was a member of the Board of Trustees. I was first elected in 1923. I was the youngest member and the older members were particularly influential. They were DeForest Clark and Charles D. Johnson. In consideration of the licensing of businesses in Mullan which resulted in Ordinance No. 105, Mr. Clark and Mr. Johnson were the

most active. Clark was a director of the First National Bank of Mullan, a property owner in Mullan and a former business man. He is dead. McCord, another member, is dead and Johnson is dead. The raising of revenue led to the passage of this ordinance No. 105. The village was in debt. At that time there were about eight thousand dollars warrants outstanding, and that was presented to the council two or three months prior to the passing of Ordinance No. 105. Everybody was interested among the merchants and everybody in Mullan; it was commonly talked. The fixing of the soft drink licenses was about as follows: It was discussed and I think the idea that it was placed on soft drink parlors was that they were places that would not naturally pay as much property tax as other lines of business, say, for instance, like my own mercantile businesses, and also that they would require more police protection, naturally, staying open late at night, and the fact that they were places where men congregated and did not have homes, it naturally would. There was no intention as far as I was concerned of fixing that license fee to license the sale of intoxicating liquors. After the passage of ordinance No. 105 the clerk issued the licenses. I had nothing to do with it and the clerk took charge of the execution of the ordinance.

With reference to Exhibit No. 7, these lists are lists that the Chief of Police always have taken around Mullan ever since I have been on the board, which developed in having a policeman and later developed

in having a regular night policeman. It was just a custom. That was carried around by the Chief of Police. Different names have been put on them, I guess. The headings were changed from time to time. The Village Clerk drafted the heading. I had nothing to do with it. I knew the donations were made, and the money was all used for city purposes as well as that received from licenses. I have never received any salary or compensation as councilman. There was no action taken about the continuance or discontinuance of the licenses in Mullan under Ordinance No. 105. The system was just continued from year to year. I remember when Needham was appointed Chief of Police. I became chairman of the board in 1927, after the first meeting. There was nothing said at that meeting about Needham getting a percentage of the amounts that he might collect. There was no discussion of the collections at that meeting. Needham left very soon after he was appointed with F. O. Welch. I saw him in my drug store shortly after his appointment. I talked with him. I told him I wanted him to make a special effort to keep drunks off the street. He did not say that the only way to do that was to close up the bootlegging dumps, and I did not say, "We don't want to do that, the property owners would object." I have no recollection of giving Needham any list of places to collect from. I might have. I have no recollection of giving Needham names of places which I said I did not know whether they were selling beer or not, but for him to

find out. I saw Needham before he was discharged as Chief of Police. I told him there was going to be a meeting and for him to attend, and I may have told him it was a meeting relative to his discharge and he was to be there. He came to me shortly afterwards. I did not state to him that I did not know what the trouble was about his discharge, and he did not state to me that "That is funny that you asked for my resignation without knowing what it was for." I did not say to him, "I will tell you this much, it is not the cause of any dishonesty or anything relative to your character." The remark he did make was he said he had lots of good work in his bones and it did not make any difference. That was all of the conversation. I do not remember Needham stating to me at the city clerk's office a day or two later, or at any time, "Now Mr. Harwood, you fellows have asked me to resign, so I will ask all of you to resign and we will call it square." I don't remember any statement like that made, and I did not, in response to such a statement say, "Well, it might be as well to do so." I do not remember his saying, "If you do not resign I will spend the last dollar I have got in the world to have you fellows put out of here." He made no remark like that to me. I remember a conversation with Mr. Savage of Mullan. It came about from a report that the policeman had made mention that he had been approached to make a donation on this list and that he had refused, and I just went down to see him, and mentioned that I was told by the police department

that he, Savage, had refused to make a donation. I asked him his reason, and I think he told me at the time that he was not in a fix to make donations to the city at that time. I said nothing to that and did nothing and did not take the matter up with him again. Savage did not say to me it was dangerous to take money from people selling booze. No remark was made like that. I did not say to him in response that I did not think there was any danger inasmuch as all the money went to the city and the councilmen were not getting anything for themselves, and that I did not think any jury would ever convict them when they were not getting any benefit directly. Savage did not say anything about a bribe.

Q. Now, Mr. Harwood, during all the time that you have been a member of the board of trustees of the Village of Mullan have you ever promised protection to any of the people who took out a license of any kind or made donations, from prosecution for violation of any laws?

A. No sir.

Q. Have you during that period at any time agreed with those people that they were to have any kind of protection in consideration of those payments?

A. No sir.

Q. Have you agreed with other members of your various councils or the defendants in this case, or anyone else, that those persons or anyone should have protection against prosecution for violation of the

National Prohibition Act?

A. No sir.

Q. Or that the police officers should in any way assist them or aid them in violating the National Prohibition Act?

A. No sir.

Q. Did you ever intend to violate the National Prohibition Act?

A. No sir.

Q. Or assist anyone else in violating it?

A. No sir.

Q. Or protect them in any way if they did violate it?

A. No sir.

Q. Or interfere in any way with the Federal officials or state officials in the enforcement of that law or the liquor laws?

A. None whatever.

I never received any salary from the moneys paid in, or any moneys.

CROSS EXAMINATION

BY MR. RAY:

In the winter of 1923 and 1924 Ordinance No. 105, the occupational ordinance, was discussed and I was present at those meetings. Gyde was the village attorney. He informed us that we could not have any

ordinance to sell liquor and it was mentioned at that meeting by several of the members that that was not the purpose of the ordinance, to license intoxicating liquors. It was discussed extensively and explained that it was not the motive or intention of the council to pass any license which would interfere with the National Prohibition Act or act of the state. I know it was mentioned that they were not trying to license intoxicating liquors. I remember that very distinctly.

Q. So that by February 4, 1924 you and Elmer Olson at least of the council and now living were apprised of the fact that it was at least a violation of the State Prohibition Act and the National Prohibition Laws, if the council by any subterfuge directly or indirectly did license persons or places for the sale of intoxicating liquors?

A. And Mr. Gyde made some mention about the case of *Nelson v. somebody* there, but I don't think it related to anything in the dealings of liquor or anything like that. It was some other matter relative to the ordinance which I don't remember right offhand.

Mr. Gyde did make the remark that it would be a violation of the Prohibition Law, but somebody in the meeting, when we were preparing this ordinance said that we were not trying to license intoxicating liquor. Our idea was to provide revenue for the village of Mullan. I have a soda fountain in my drug store. I took that over on July 1, 1919 and have sold soft drinks there. Have never sold any intoxicating liquor. I do not recall how many soda foun-

tains there were in Mullan when this ordinance was adopted. I know generally the nature of the business conducted in the business section. There were at least three soda fountains, one hardware store, three general merchandise stores, at least three garages, two barber shops, three hotels. The twenty-five dollar a month license for a place was arrived at because they stayed open late at night, did not pay as much property tax as mercantile establishments, they would necessarily require more police protection, and for that reason the license was placed at twenty-five dollars. They were cigar stores that sold pop, cigars, tobacco. Some of them had pool tables. I do not remember about the license for pool tables in this ordinance. The ordinance will show. I think the soft drink stands and soft drink parlors would be one and the same thing. The ordinance mentioned about an extra charge for a soda fountain if a person had one in his store. I do not know just what the license was, but I know it was an additional charge for a soda fountain in any store. I cannot answer as to whether or not we mentioned the twenty-five dollar license places could sell only soft drinks. Some of them sold ice cream and tobaccos, and if they had card tables they were called parlors or cardrooms. It was not intended to cover anything but non-alcoholic drinks. I had a license, not a twenty-five dollar a month license. I paid a yearly soda fountain tax to the Village of Mullan for my drug store.

Q. Why didn't you have a twenty-five dollar a

month soft drink license?

A. Because I had a large property tax. I just explained that the large business, mercantile businesses and larger businesses, that is the way the ordinance was drawn up, that these so called soft drink parlors which you have in mind, they did not pay any property tax to amount to anything, they are places where people would congregate; necessarily they require more police protection, and therefore that license fee was fixed at twenty five dollars for those reasons.

There was no exemption based upon the amount of the taxes but that was the intent of the people that was framing it, to arrive at the equitable value which each one should pay. I do not know why it was not placed in the ordinance. That was the committee's findings, the committee at which Mr. Wilcox and Mr. Taylor and the members of the council were present, arrived at that conclusion. The Bilberg Hotel paid a large property tax and the twenty-five dollar license tax was taken care of at the clerk's office. I had nothing to do with it. I made no inquiry after the ordinance was passed. I have been mayor since May, 1927. I do not issue instructions to the clerk with respect to the licenses. He has done that work himself. I do not know what license the Central Hotel was getting. I did not make inquiry; I was not interested, just interested in my business and the finances of the community and the improvements. I had an interest as to the source of revenue of the village of Mullan, but I did not make inquiry at times. My

interest was gathering revenue to carry on improvements. I was interested in seeing how much money they could get and I made no particular inquiry as to the source, I made inquiries from time to time in the meeting as to how much money was collected, and verified the city clerk's and treasurer's report at all times; that is, we acted on it, on collections that were made from time to time. It was read in open meeting every time. The clerk was under bond. We took that into consideration. We thought we had an honest man there. He made all reports of the village, never was assisted by any member of the council; made them up himself, issued all licenses himself and I had implicit confidence in him. The reason we requested the Chief of Police on the 6th of June, 1927 to make a report immediately following the treasurer's report was ever since I have been a member of the council it has been common for the police at most of the meetings just to make a general report on the conditions of Mullan, that is, like for instance, if there is a fire trap in town to report it to the city council or something like that. It was not in relation to these finances of the village whatever. The reason we issued this special instruction on June 6, 1927 was that I was chairman of the board, and I wanted a public record of this list so there would be no doubt in anybody's mind of misappropriation of funds in the city of Mullan. I knew about the list for I lived in town and knew practically everybody in town, and where they lived. I knew practically every name on the list and

what they were doing. I knew Charles Fond paid thirty-five dollars to the village of Mullan for financial help to the city. He was running the largest hotel in Mullan, the Bilberg and had a bar. He had forty or fifty lodging rooms. I assume he was running a gambling game. I do not know personally that he paid that thirty five dollars a month for the privilege of running the gambling game. I do not know about the card games. I never played cards. I knew practically every name on the treasurer's report and the business each was engaged in. I was interested in the welfare of the village and the entire community and the people of Mullan. I would not say I was interested in obtaining money for the village from prostitution, gambling and bootlegging. I was interested in the finances and the improvements and welfare of the people. I knew the village was obtaining money from prostitution, gambling and bootlegging, month after month. It was in the report. We did not discuss it at the council meetings to any great extent whatever. I have been in business since 1919 and have accumulated considerable property. I lease the Harwood Drug Store property; own my own home and another residence. I have from time to time leased and sub-leased places of business in Mullan. I rented to Ray Mackin from September, 1927 for approximately one year the cabin she occupied for fifty dollars per month. I did not know she was selling whiskey or practicing prostitution. Her name appeared on the list month after month and I made no inquiry. I do not know

whether she was issued a license. I never gave a thought about her paying twenty-five dollars a month. The money was going to the City of Mullan. I did not go out to find out because I was busy in my own place. I do not own the cabin. I do not know what rent I paid. It was part of a lease I had with Mr. Stowberg, the Harwood Inn, and this cabin of his. I think it has two rooms. I was subleasing the Central Hotel in 1927. I think it was rented to Anderson & Forsythe, two ball players that were playing in the Idaho-Washington League; cannot say offhand how long they rented it. It was leased to Roy Appleton in 1928; I do not know who his partner was. He rented the whole building. There are rooms upstairs. There was a bar room that had been there from early days, never taken out. I suppose it was operated by him. I never purchased a drink in there myself. The general supposition is it was operated by Appleton as a bar room. I continued to rent it to Appleton until he was arrested by the Prohibition Department and the place was abated for maintaining a nuisance under the National Prohibition Act in June, 1928. I leased the building that is known as the Marble Front. Frank Hahn was downstairs in 1927. Needham did not take up with the council the question of Hahn opening up a bar near a church in Mullan. I do not recollect of his having taken it up with me. I do not remember who rented it after Hahn. I would have to look at my books. I guess Frank Hahn had a bar in there. I do not know whether the Marble Front appears

on the list while Frank Hahn was there. I do not know what kind of a license he had or if he had a soft drink license for running a bar room. He went up to the city clerk and got it and as a member of the city council I accepted the money and disbursed it. Different ones occupied the upstairs. Hazel Harris was one. She was on the stand the other day. Babe Kelly was one. I suppose it was a house of prostitution. I know it was.

Q. Now were those rentals of the cabin and the Marble Front downstairs and the Marble apartments and the Central Hotel for the purpose of the welfare of the village of Mullan?

A. That might have been private. It has nothing to do with the Village of Mullan whatever.

Q. So that on the one hand you were deriving revenue from prostitution and whiskey selling and on the other hand as councilman you were receiving the monies contributed from this source and distributing them, were you not, Mr. Harwood?

A. I received the money for the city and received some money for myself.

The part I got for the city was spent for the city and the part I got for myself I applied to my own use. I was with Ristau and Wheatley at Hull's place when he advised us of the danger of the council if we were in fact issuing licenses to liquor. Nothing whatever was done about his advice, because the city needed the money and they did not think they were doing any wrong. They thought they were not violating

the National Prohibition Law, had no thought of it at all. I would not say we did not care. It was in the community at all times. We were advised definitely in July, 1929 through Mr. Hull that the Federal officers were investigating the conditions in Mullan, and that is the reason we discontinued. I never apprised any of the other members of the council of what I learned from Mr. Hull other than Mr. Ristau and Mr. Wheatley. The entire council was present at the meeting of July first, 1929. We took heed to the advice of Mr. Hull and stopped it. That is the first time that we were definitely advised. Martin advised us he had been in conference with our attorneys.

Q. And the reason you paid attention, as you have just stated, was because of the fact that the federal government was investigating the conditions?

A. We knew they were right in there then for a few days before that.

RE-DIRECT EXAMINATION

BY MR. POTTS:

I rented the cabin. I had no knowledge while it was rented that intoxicating liquors were sold there. It is in the main business section, fronts in Hunter Avenue. I rented Central Hotel from month to month. I had no exact knowledge that liquors were sold there before the abatement proceedings. I had no personal knowledge of it. Just a general understanding.

After there was a raid on the Central Hotel I closed it myself. Appleton was there when the raid took place. I closed the place after notice of the abatement and the Marble Front was rented by me from month to month to different tenants.

JAMES L. MARTIN, a witness recalled on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. POTTS:

Q. Mr. Martin about a week after M. D. Needham was discharged as chief of police of Mullan in your office as clerk of the village, no one else being present except Needham and yourself, did Needham say to you that he was going to send Huston and Harwood to the penitentiary if it was the last act of his life?

A. Yes sir.

Q. A short time later during a session of the Federal Court in Coeur d'Alene, the latter part of November or early part of December of 1928, in your office at Mullan, no one else being present, did Needham say to you that he had presented the matter to the authorities and they were working on it, and that he was going to send Huston and Harwood to the penitentiary, or words to that effect?

A. Yes sir.

CROSS EXAMINATION

BY MR. RAY:

Q. Was Mr. Needham quite peeved the next morning after he was asked to resign?

A. He came to the office and informed me that he had been discharged, and he asked me to look up the records and see if he was not elected for a full term of two years instead of appointed. I did so for him and naturally that fixed the date in my mind.

Q. By peeved you mean boiling mad, or what do you mean by that?

A. He was not feeling good at that time.

CHARLES ANDERSON, one of the defendants, testified as follows:

DIRECT EXAMINATION

My name is Charles Anderson; I live in Mullan; I am one of the defendants; I am twenty years old. I have lived in Mullan all of my life, with my father and mother. I have followed mining and smelting since finishing school and have worked for my parents. My mother was running a boarding house with twelve boarders; my father is a section foreman. I have tended bar in soft drink establishments, at the Mullan Inn; worked for Charles Johnson. Then at the Bilberg Hotel as night clerk; had charge of renting the rooms and took care of the bar. I was working for

Charles Fond for about three months there. After that I worked at the Rockford, sometimes known as the White Front. They started up with a little lunch counter and then a barroom on the other side of the lunch counter. I worked there for Frank Hahn. During that time some liquor was sold at the three places, the Mullan Inn, the Bilberg and the Rockford. If a stranger came into the room I turned him down. I did not pay any license. I had nothing to do with obtaining the license and did not know anything about it. I saw one lying around there; did not pay much attention to it. I did not contribute any money to any donation. Subscription lists No. 2 and 7 were not presented to me. I never had seen them. I never had any conference with any of the police officers of the village of Mullan in connection with the sale of intoxicating liquor. Did not have a conversation at any time, nor did anyone for me, with the police officers, or with Weniger, or with Bloom. Army Welch or Morphy, the night man at Mullan, might have come in while I was tending bar on a few occasions. No liquor was sold over the bar to anyone in their presence and they never got any intoxicating liquor from me. I never saw anyone give them any intoxicating liquor. I never did see Weniger or Bloom in those places. I never did see them. I never talked with any of the village officers with reference to those places I was working in, and so far as I am concerned there never was any immunity promised by any one with reference to the sale of intoxicating liquor, and

never had anybody tipped off to me or attempted to tip me off, and no understanding that I was to be tipped off by anyone during the time I was operating there. I knew one Federal prohibition officer operating in this section. It was Webb. I knew him when he was playing baseball at Coeur d'Alene as catcher. I do not know Johnson and Hesser. Webb played ball at Mullan during the time they had the Idaho-Washington League and Coeur d'Alene was in the league. I did not have any understanding or agreement with any of the men operating any of the other places around in that locality where liquor was dispensed. I did not try to cooperate with them in any way, shape or form with regard to selling intoxicating liquor. I didn't know anything about any committee or any conference at any time in connection with the sale or disposition of intoxicating liquor in the village. Mr. Needham and I were not friends. We had trouble. It originated with his trying to hang a vagrancy charge on me, in 1928, I think. Afterwards we had a personal encounter in a poker game, in which Needham had a hand.

CROSS EXAMINATION

BY MR. LANGROISE:

I was working in the Mullan Inn in 1928. I am pretty sure I was doing mining work in 1928. I worked at home, helping with the boarders for my mother,

doing housework in the home. That is all the work I did in 1928 except bartending. I do not remember whether I worked in 1927. I did odd jobs. I did not tend bar in 1927. I did not tend bar in 1929. I helped mother around the house, and tended bar at the Rockford Cigar Store. I know Harry Jewel. I have sold him a drink in the Rockford bar. I do not know Cooper; do not remember whether I sold him drinks in April, 1929 over the Rockford bar. I worked at the Mullan Inn for only seven to ten days in 1928. Charles Johnson took this place up and I mostly fixed the place up; it had been shut down and I was getting the stocks of soda, pop and candy and so forth fixed up in there. Most of the business in the Mullan Inn was dispensing whiskey; there was quite a lot of cigarettes, cigars, candy and so forth sold. The pop there was not used by customers as chasers for the whiskey. It has been so used. I sold drinks over the bar and that is all I can say. I saw Needham in the Mullan Inn while I was working there a couple of times. I kept the liquor under cover always when Needham was around. I also kept my eye on him. When I was tending bar I was not arrested by any one for violation of the National Prohibition Act other than the Federal officers. I was not bothered by the police officers at Mullan or by the Sheriff of Shoshone County. I did not see Needham collect any money when I was at the Mullan Inn. I worked the night shift at the Bilberg except occasionally. Whiskey was sold over the bar there. We

had a place out back and we would go out there when things got kind of tough. That was not when the Federals were coming. It did not get tough then. I never heard of any Federals coming. I have seen them around there myself. I saw Webb around there. I know of their making raids. We sold about a week in the back room. The rest of the time we sold over the bar. The Bilberg had quite a long bar; it was one that had been there in the early days. I was not kept busy unless I had quite a number coming in to get rooms. That kept me busy, the hotel part. I did not have much to do in the barroom. I had to be downstairs and it is connected with the lobby of the hotel. I had to be in there to watch. I saw Needham come in quite frequently when I was in the Bilberg; do not know how many times he came in. I know Army Welch. I saw him there frequently. Hartford Morphy would come in and go out, may be come in once a night and look around and go out; wouldn't stay very long. I did not see him collect any money there; never saw them collect any money any time when I was working there. The card room was out towards the back room, in the same room the barroom was; there is a sort of a partition there. The card game was going on most of the time. I never saw Welch or Needham there when the card game was in progress. I never paid any attention to the card game. I know Weniger. He never was there while I was there, nor was Bloom at any time, except Bloom came in on one occasion. There had been some trouble and

he was looking for two men and asked me if these men were staying there. I looked at the register and said they were not and he went out. During the time I was helping my mother on this house-work I visited the Marble Front and the Bolo, the Central pool hall, Hunter Hotel. I have been in all of them, visited around among them. Sometimes I bought drinks in them. Liquor was sold over the bar the same as at the other places where I was working and at the same price. I started working at the Rockford in March, 1928, or perhaps 1929. I cannot give you the exact dates. I worked there two months in all. I do not remember seeing Army Welch during that time. Did not see Morphy during the time I was there. I did not see Bloom there. I did not see Weniger there. Never at any time did I see any officers in the Rockford. Frank Hahn was the man that hired me. I started to work there when Pikkerrainen went to jail. There was no one working there while I was there. Hahn as supposed to be in jail too. I was working for wages. I took care of the money and the whiskey was all ready there. I took the money over to the jail to them. I was the only bartender there. The place was just open at night. It was closed during the day time. They had quite a stock of candy, cigarettes, cigars and soda pop. I bought cigarettes and candy and stuff like that. I don't know who paid for the license. I did not. Welch did not ask me for any money. I do not know when the license was paid for the months of May and June. I did not pay it. Welch did not ask me for it. There

was no card game there at the time I was there.

JOSEPH SPECK, one of the defendants, testified:

DIRECT EXAMINATION

BY MR. WERNETTE:

My name is Joseph Speck; I live in Mullan; have lived there thirteen years. I am a single man. First worked in the mine, at timbering, mostly; worked at mining in 1907 and up until 1925. In 1925 I started working for Martin Everett, at the Montana Pool Hall. I was working for wages, selling liquor there. I was arrested; was in jail three and a half months before trial and I got five months and a fine—nine and a half months in the county jail of Shoshone County. When I got out in 1926 I went to work threshing. I came back to Mullan in November. I went to work for Perry Hutton at the Mullan pool hall; worked until July, 1927; was sick until March, 1928; then went back to the same place and worked three shifts and then I got arrested by the Federal officer. Charges were preferred against me and I plead guilty and served six months and a fine in the Kootenai County jail. I did not do anything then until February, 1929 when I went to work for Florin at the Dew Drop Inn. Since then I have not sold any liquor to anybody. I heard the testimony of one of the witnesses on the stand that he purchased a drink of liquor from me at the Dew Drop Inn, but he did not. No liquor was handled at the Dew Drop Inn when I worked

there. I never donated or contributed any money to the village of Mullan. Exhibits No. 2 and 7 were never handed to me. I did not know they were being circulated. I saw a license on the wall; did not know what it was for. Sometimes Needham and Army Welch came there. I did not sell liquor when I was there because I was afraid of them. I have known Charlie Bloom since I came to Mullan. Seen him in the places a couple of times when I was working behind the bar. He came in to ask if I had seen a man and then walked out. No liquor was sold in his presence. I never did see Weniger. I never had an understanding with them at any time. I never talked with any officers up there, or with Needham, Welch or Morphy with regard to the sale of liquor. No one ever at any time promised me immunity or protection. I did not expect any; I got caught every time I went in. I have known Hesser since 1925. I did not know Johnson or Webb. I know Webb since the second time I got arrested, and I know Johnson when I was in the Kootenai county jail. No body ever tipped me off, or told me the Federal officers were coming during the time I was working there, or that there was going to be a raid and nobody tipped me off with regard to any other officers. I never talked with any of the members of the board of trustees there with regard to selling intoxicating liquor; never had any understanding or agreement with anybody in that connection. I paid no particular attention to what was going on in other places. I just tended to my own business, that is all.

CROSS EXAMINATION

BY MR. LANGROISE:

I had an understanding with Hartley while I was working there that I would sell liquor.

During all the time I was in Mullan, except when I was in jail, on the Federal charge, I was never arrested by the police for selling liquor. I was never bothered by the police officers or the town officials where I was bartending; never bothered by Mr. Weniger, the sheriff, or any of his deputies. I sold whiskey over the bar. I did not sell beer. If a stranger came in I did not give it to him. Those I knew I asked what kind of drinks they wanted, whether near-beer, soft drinks, pop, whiskey. Sold no beer. Charlie kept the whiskey we were selling at his home. When we served a drink it would be out of a bottle in a little whiskey glass right over the bar. I did that all the time I was working there. I know Florin. He was chief of police. He had just got started when I got arrested. When I came back he was chief of police. He sometimes came into my place. He would come in, walk around and walk out. Sometimes others would be in there. If I see anybody drunk, I don't give him drinks. I don't give them too much to get drunk. No one got drunk in Hartley's place on my shift. If I refused them a drink they walked out. You could not smell the odor of whiskey in there. You got to bring it under your nose to smell it. I could not smell it myself. I do not know whether one who is not accustomed to having the odor of whis-

key in front of them all the time could smell it or not.

I know the Mullan Inn and the Bilberg Hotel; have been in both of them; never bought any liquor in there; did not buy any in the Rockford or the Central Hotel Bar. I have never been in the Hunter Hotel bar; I have been in the Bolo; I got whiskey there. The bartender got a pitcher behind the bar and put glasses on the bar. I worked in the Mullan Pool Hall. I never was in the Marble Front, the Fern Apartments or the Coffee House or the Coffee Shop, Mike Kennedy's Place; have been in the Miners' Club; have seen them serve drinks in whisky glasses over the bar. It was a common thing; never was in the Rex rooms, the Coffee Cup or the White Front. Florin was chief of police most of the time I was working. He was chief of police when I was working in the Dew Drop Inn. He came to the places where I worked. I did not serve drinks when he came in. If he came in a hurry I dumped the pitcher out; if he came slow I didn't. He did not search the place. I did not try to get a Luger pistol when he came in there. I remember Hesser, the prohibition agent, coming in. When I saw him coming I dumped the pitcher. I did not grab for this Luger pistol. Everett put it there. I cannot even open the Luger pistol. When Florin came in I dumped the pitcher once. He did not search and did not arrest me. I seen him when he came through the door. I stayed behind the bar most of the time. He come pretty fast; Bloom didn't come fast; Florin didn't come fast.

RE-DIRECT EXAMINATION

BY MR. WERNETTE:

The Luger pistol belonged to Martin Everett; it was in the Montana pool hall. I had nothing to do with it; I cannot even open it. We had the liquor in a pitcher behind the bar. I never used a bottle to pour it over the bar. The place was not open to the front. There was a door and partition, behind the partition was the bar.

WAINO PIKKERAINEN, a witness called on his own behalf testified:

My name is Waino Pikkerainen. My home is in Mullan; I have lived there since 1920. I am a man with a family. I have worked as a miner for twenty years prior to coming to Mullan. I started in business in Mullan in December, 1923 at the Miners' Home; operated it until March, 1924, I think. The lease ran out and I quit. I furnished the place two or three months after that with pool tables, and continued to operate there until early in the fall of 1924. The license had already been issued when I went in there. After I got through working there at the Miners' Home I went to a place called the White Front, which I operated for myself from January until November, 1925. I was arrested by the Federal officers, charged with violating the liquor laws and sentenced to five months in jail at Wallace. After I got out I went to

work for Frank Hahn at the Mullan Pool Hall; worked about three weeks; then he sent me in to the Marble Club where I worked until 1927, in the fall. Then I went to the Rockford, where I worked about four months; then I was arrested by Webb and Johnson, plead guilty to violating the law in Federal Court, and was sentenced to six months and a fine of two hundred and fifty dollars. I have not been doing anything since. When I operated the place myself I got a license from the village, from Judge Martin's office. He was the only one I talked to about the license. I understood all the business places were licensed in town. He told me what kind of a license I had to take out. I paid twenty-five dollars per month. Hahn was away most of the time when I worked for him. I operated the business for him. When licenses were brought to Hahn's place by the Chief of Police I took the money out of the till under instructions from Mr. Hahn. The chief of police came there with subscriptions for donations for the improvements in Mullan. I did not read it. It was explained by the officer. I asked Hahn about it. He was out at his cabin, about two miles out of town. He said he had been fighting with Needham all the time and to go ahead and make the donations. Nothing was said by Needham or any one else with reference to this money being for the purpose of protection or authorizing Hahn or myself to carry on liquor operations. It was collected for the welfare of the city. The first time they mentioned the bridge fund and school

house and something like that. When I was running the place for myself, or during the time I was working for Frank Hahn, I had no conversation with any of the police officers wherein the question came up about selling or unlawful handling of intoxicating liquors. There was nothing said by them whereby they promised me any immunity or protection in any way. I never talked with the trustees of the village about those operations, was not promised any immunity by them and was not promised immunity or protection by any of the defendants here, and did not talk to any of them about it. The police officers came to our place. There was a lunch counter at the Marble Club. They would eat. If they wanted tobacco or anything they stopped at the show case there and got it. I never saw them in the place where the liquor was actually dispensed, and Hahn told me if I saw any of them to tell them to keep to Hell out of there. The lunch room was in the same building where the liquor was dispensed. The lunch room is against the front and there is a partition there, and the bar is back of that partition. No one on the street could see back of the partition. When liquor was sold the bottle was not put up on the bar. It was handled in a pitcher. In no other place where I worked could people look in from the street. At the Miners Home there was an old bar fixture in there; it was partitioned the same way and swinging doors. The Rockford was the same way. All liquor was handled in the same way by glasses and pitcher. The pitcher was not on the bar when

the drinks were sold. The glass was handed to the customer. I never had any conversation with either Bloom or Weniger about handling intoxicating liquor and there never was any promise at any time about immunity. During the time I was operating up there my place was raided by Weniger. He raided the White Front three or four times. No one ever tipped me off or attempted to tip me off with regard to any of the raids that were being made by Weniger or by any of the Federals. I had no understanding with any of the defendants and no agreement as to how those places were to be operated.

CROSS EXAMINATION

BY MR. LANGROISE:

Weniger raided my place, the White Front, three or four times in 1925. I was not arrested or prosecuted. Chapman, Weniger and Bloom raided the place, two of them at a time. They were not all in the bunch. They did not raid me after the Federals took me. I was there for awhile after the Federals arrested me, before I went to jail, but no one raided me after that. In 1925 they raided me three times the first two weeks I was there. They raided me at the Rockford once, in June. They raided me in the Marble Club. I was bartender at the Marble Club; sold whiskey at two bits a drink. I did that all of the time I was working for Hahn. There was gam-

bling two or three months of the period. I did not handle the tables. During that two or three months period we paid the city thirty-five dollars a month on a donation. I think Hahn took charge of it after he came out of his sickness. I do not recall paying thirty five dollars a month at any other period. When the list was first presented I would not pay because it was not my money. Needham just showed it to me. He told me we were to pay thirty-five dollars; said it was for the bridge fund. I told him I would see Frank and I saw him and he said, "I have been fighting him all the time about that." Finally he says, "Well, go ahead, if that is the case; if it is a bridge fund, go ahead." Hahn said he had been asking for it all of the time and I have been fighting it. A couple of days afterwards I paid the thirty-five dollars. I do not remember whether it was the next month or the month after when Needham came in again. At the next donation I think I paid thirty-five dollars. I did not see Hahn about that. I understood his instructions were to pay. I understood it that way. There was no liquor mentioned in connection with the thirty five dollars. During that same time we were paying thirty five dollars for soft drink license. That made sixty dollars a month we were paying the city. I do not know whether there was any yearly license. I do not think so. I did not pay any yearly license, at any of these places, except in the year 1923; I paid sixteen and a half a year, and I believe in 1924, but there was no monthly license then. I do not know of

any donation after gambling stopped. Army Welch came into the place once a month in the Rockford and I paid the license the same way there. He came to the show case and I would pay the soft drink license for the Rockford Cigar Store. We sold cigars, and in soft drinks, Bohemian Club, Raineer Beer and all kinds of stuff. I did not check up on the soda water I carried in that place. It was not used for chasers. We used water for chasers. I did not have any pops for chasers. The license was just put on as soft drink license and we paid twenty five dollars a month. In the Rockford there was a back bar there, with punch boards and candy boards and stuff like that. And there was soft drinks and tobacco there. I kept the cigars in the show case in front, and the rest of the tobaccos in the barroom and the soda water and punchboards and the whiskey. That is all I had in the barroom. In the front part of the place, which is only about six feet long, was the show case. Anybody who wanted any tobacco would not necessarily go to the barroom; he could get it at the show case. We could walk right to the show case from the barroom and sell tobacco and cigars. Neither Weniger nor Needham ever went back into the bar room. Once in a while Morphy did; in the winter he would warm up a little at the stove. When Morphy went in there I did whatever I happened to be doing; I cleaned up if there was anything in sight. I did not tell Morphy to keep out of there. I do not think I ever saw Bloom in the Rockford only on the raid. He was

in the Marble Front a couple of times looking for somebody, asking if I had seen a certain fellow. I only answered his question. Weniger was at the show case one afternoon and he asked me for Chuck Anderson. Anderson was not working there at that time. He did work there as a bartender. He is the same Charles Anderson who testified yesterday. The Rockford was about a block from the church in the business section. Hahn was arrested and taken down by Needham to the city jail. I talked to Needham about it on the sidewalk. I did not talk to Welch about it at that time. I asked Needham what the bail was and gave him twenty five dollars and he let him out of jail. I did not know whether Hahn had refused to pay his license. I did not pay it. They said it was twenty five dollar bond. That was about eleven o'clock at night and I gave him twenty five dollars. I do not know if Hahn was prosecuted. I got the money out of my pocket. I gave it to Needham and I got my money back the same night. I know Weniger; if I would see him I would know him. I was in Wallace in jail for five months on a Federal charge. I guess he was in the jail twice in all that time. Bloom was the jailer. I saw him there and knew him and talked to him. I told him what I was there for. Since that time I have never been prosecuted for violation of the liquor law except by Federals. During the time I was in and around Mullan I have been to the Bilberg Hotel. I have bought whiskey there over the bar for two bits a drink. I never was in the Mullan

Inn. I have been in the Mullan Pool Hall and have bought whiskey there over the bar for two bits a drink. I have been in the Montana Pool Hall and bought drinks over the bar, and paid two bits for them. I don't believe I have been in the Hunter Hotel Bar. I have been in the Bolo and have not bought any whiskey there. I have been in the Central Hotel Bar, but have never seen any whiskey there. I never bought any; never tried to buy any. I thought it was sold but I have never seen it.

RE-DIRECT EXAMINATION

BY MR. WERNETTE:

Reynolds and Foster raided me the first time and the second time was the first time I saw Johnson, the time they raided me. I have known Webb as a ball catcher; have seen him around Mullan when he was playing ball for the Coeur d'Alene team. I knew Hesser. First knew him when I was in jail the first time.

AGNES WEST, one of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. WERNETTE:

My name is Agnes West. I live in Mullan, Idaho;

have lived there all my life outside of three years. I am a married woman, with an invalid husband and a twelve year old boy. My husband was a miner. He had a paralytic stroke in the mine in November, 1925 and he has had several strokes since. In the last two or three years he has not been able to take care of himself. In the last year and a half he lost his mentality and speech. I have been handling beer since my husband was stricken. I was busted. I did not keep an open house. I made the beer myself and my patrons were Mr. West's friends. No one could see what was going on from the outside. Needham never was in my kitchen but did come to me with a subscription list to my house. I could not give him any money. Needham said my husband was lazy and there was nothing wrong with him, although his left side was paralyzed and he couldn't do anything. Eventually I gave Needham some money. I met him coming home from town, on the street, and he asked me when I was going to donate any money to the city; he said the city wanted improvements for this and that something about the bridges needed fixing. I told him I would give him something if he would stay away from me. I contributed four or five times, as near as I could recollect. Neither Morphy nor Welch nor Needham told me that the money I contributed was for the purpose of permitting me to sell or make beer. It never was discussed with me by Welch or Morphy or Needham. I never discussed it with the city officials. I never knew Weniger until we came

down to this trial. I never saw him. I have known Bloom since I was a little kid. I never talked with him. He came once with Mr. Ristau to visit us. No beer was disposed of at that time, and we did not discuss the matter with him. I have not been around to any of the places mentioned in the testimony. I did not inquire what was going on there. I did not have any conference with any of the inmates of those places. Nobody ever promised me immunity or tipped me off, or attempted to tip me off and I did not expect any immunity and had no understanding with anybody that I was to get protection. The reason I made beer was I was short of funds. I could not leave my husband at the hospital. I had to care for the home and get him home, and so the boys came down to the house and talked with him and said why didn't I make a little beer and sell it when they came down. So I had a little twelve gallon crock and I made beer in that and sold it because I couldn't afford to pay out any money. I didn't know what to do. I had nothing to live on for myself or my child.

CROSS EXAMINATION

BY MR. LANGROISE:

I started selling the beer in 1927. My husband came home before Thanksgiving in 1926; he needed my constant care and does now. He is just like a baby. I guess you understand me. I needed the money to

take care of him. I was dependent upon it entirely. I catered only to the good class of people. There were no drunks, only personal friends. Welch came down occasionally but never was in my house. Morphy never was in my house. Bloom I have seen ever little while.

Q. The first time that Mr. Needham came down and asked you for a \$10.00 donation, what did he say to you?

A. Well, he showed me the slip he came down with, if I am not mistaken. Right on top it said, I do not remember, something about improvements. He said, "Don't you like to see your city improved," he said, "you own your own home here," and he mentioned something about a bridge. I knew they had gotten a new bridge in there, and he wanted me to donate \$10.00 to the city for these improvements. I told him I couldn't do it, because I needed all my money. I said, "I got a lot of bills to pay, Mr. Needham, which I owe and must pay." He kept coming down and asking me if I wouldn't do it, and finally he met me that time on the street and he just kept after me, and also insulted my poor husband—I told him to come down to the house and I gave him \$10.00, to keep him away.

I know Mr. Huston and Charles Anderson is my brother.

JOHN THOMPSON, one of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. REED:

My name is John Thompson; I live in Mullan; have lived there eight years. My occupation is mining. I tended bar once, early in October, 1929, the only time in my life.

CROSS EXAMINATION

BY MR. LANGROISE:

I tended bar at the Miners Club for a man by the name of Pasulin, who was running the place for another man. I worked there a day and a half before I was arrested for selling beer at twenty-five cents a bottle. I was caught by Federal officers. Pasulin told me when I first went there not to sell beer or any liquor. I was to sell soft drinks, cigarettes, tobaccos and candies in the barroom. He said the place was going to be abated, and he wanted to get rid of the stock before it was. A fellow came in and asked me for a bottle of beer. I told him I had nothing but near-beer. He said, "I got some beer at home", why don't you let me bring you a case, and you can make a few dollars on the side." The next day I started selling beer in the morning and got pinched in the afternoon.

MILFORD GARDNER, one of the defendants, testified as follows:

DIRECT EXAMINATION**BY MR. REED:**

My name is Milford Gardner; lived in Mullan for the last two years; I tended bar for Charlie Hartley for a while ran card games. Always worked for somebody else; never paid any money to the city and never bought a license; never had any conversation with the city officers of Mullan or the police officers about protection. No one ever promised me any immunity from violation of any law or for violation of the prohibition laws.

CROSS EXAMINATION**BY MR. LANGROISE:**

I was a bartender at the Mullan pool hall. I have been in the Central Hotel bar lots of times. I ran a poker game there quite a while. I ran it for Mr. Appleton. The game was back of the bar. I did not pay any attention to the whisky. I expect that they sold it there. During the time I was running the poker game there I paid thirty five dollars to Mr. Needham just one time. Needham said unless I paid he would close me up. I tended bar in the Mullan Pool Hall for a little while. Sold whisky over the bar for twenty-five cents a drink. I was arrested at the Central bar. Roy was away and I was working for him a little while and I was given six months for violation of the National Prohibition Law. The police and the

sheriff's office never bothered me for violation of the National Prohibition Law. The Federals are the only ones who arrested me.

RE-DIRECT EXAMINATION

BY MR. REED:

I was arrested just once. Served six months and a three hundred dollar fine.

ROY APPLETON, one of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. REED:

My name is Roy Appleton; I was a resident of Mullan for ten months in the years of 1927 and 1928. I rented the Central hotel and conducted a hotel business there. There was a bar room, card room, cigars, tobaccos and soft drinks. I was arrested on the 25th of May, 1927, plead guilty in the Federal court. I have not been in Mullan since that time. I served seven months in jail. I made donations to the city of Mullan for just a bridge fund, they told me. They told me the subscription was for different things, different improvements. Nobody promised me protection or immunity. I never talked with anybody about protection or immunity, and never heard any discussion about either one while I was in Mullan.

CROSS EXAMINATION

BY MR. LANGROISE:

I opened the Central rooms or Central Hotel Bar in August 1927 and was there until 1928. Rented the place from Arthur J. Harwood, one of the defendants; paid \$250.00 a month. I do not know whether any money was paid to the city of Mullan. My partner was Forsythe. He paid thirty five dollars every month on subscription to the city and he paid twenty five dollars a month for soft drink license. We had soda pop, buttermilk, cigarettes, cigars and tobaccos of all kinds, and that was what the twenty five dollars a month was for. In January, 1928 I paid the yearly license and I think it covered all of these operations. I could not say I paid the thirty-five dollars every month. I pretty nearly always had games in there and paid when we had games. Whiskey was being sold over the bar all of this time at twenty five cents a drink in the same room where the cigars and soda water was. The cigars were out in front. Needham came in once in a while and Welch once in a while. Mr. Bloom was never in that place. Weniger was never in that place. Welch and Needham would just come in and look around and go out. The card games were going on while they were around. I did not sell liquor while they were around, and if men were at the bar drinking they would not get drinks. I was never interfered with by the police officers of Mullan. I was not arrested by the sheriff's office but was by the Federal government.

HERMAN ARBLISS, called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. REED:

My name is Herman Arbliss; I tended bar in Mullan just once. I was arrested by the United States Government, by the Federal officers; pleaded guilty to the offense, served a month, for tending bar; have not tended bar since. When I tended bar I was working for wages. Nobody tried to collect anything from me. Nobody told me I would not be arrested.

CROSS EXAMINATION

BY MR. LANGROISE:

I have seen Mr. Weniger. He never arrested me while I was tending bar; neither did the police officers; just the federals.

MIKE KENNEDY, testified on behalf of defendants, as follows:

DIRECT EXAMINATION

BY MR. BANDELIN:

My name is Mike Kennedy; I am fifty four years old. I have lived the biggest part of my life in the

Coeur d'Alenes; I have been there thirty-three years. I am a man of family. For a number of years I was a blacksmith around the mines. Later when my health failed I ran a popcorn stand and confectionery and candy; carried a stock of five hundred dollars, and ordered twice a week. Everybody in town was my customer. I opened it in 1928; prior to that time I had been in bed for years, a paralytic stroke. I have made donations to the city of Mullan. I knew the city was in need of funds, and I told them I was financially embarrassed but I would give them what I could. I gave them ten dollars. They were talking about building a swimming pool. There was no place around Mullan where the children could swim. I gave twenty five dollars towards that pool. My children went to the swimming pool and learned to swim. Nothing was ever said to me with reference to the donation about any intoxicating liquor by anybody. There was no agreement with reference to that in so far as the subscription was concerned. I gave the money with a good spirit for the benefit and the welfare of the city. I gave no money for selling intoxicating liquors. I know Weniger when I see him. I sold liquor for a short period and I was arrested and I am serving the penalty now. I was afraid of Weniger and on one occasion I was out in the back room just coming in from putting a little coal in the stove, and I had a bottle and I saw a big fellow coming in the door and I ran back and broke the bottle and I thought it was Weniger, but it was not Weniger; it was somebody else.

Neither Weniger nor Bloom ever gave me any promise of immunity or anything of that sort. I did not let them know I was selling liquor. I was afraid to. I know Mr. Webb, the prohibition agent. He played base ball with the Coeur d'Alene team when it came to Mullan and he was there frequently during the years 1927 and 1928. Nobody ever discussed the sale of intoxicating liquors with me and nobody ever made me any promise with reference to it. I was arrested and entered a plea of guilty on the 21st of November of this year; was given seven months sentence and two hundred and fifty dollar fine. I am now serving it.

CROSS EXAMINATION

BY MR. LANGROISE:

I started the pop corn stand in 1927. I put up the building and rented the ground from Mr. McCreary. I think I paid ten dollars now and again to the City of Mullan. I think it was early in 1928 when I started selling liquor. I do not remember when I commenced to pay to the City of Mullan. Needham said I had been running long enough without paying. The next morning I went to the city hall and told them I thought the twenty five dollars a month was a little steep for a place like mine and Martin said "You aint any better than anybody else." I did not tell Martin what I was doing there, and I continued until June, 1929 paying twenty five dollars a month for the soft drink license. Before that I had taken out a license for the

popcorn machine, six dollars a year, and I paid that during the years that I paid twenty five dollars a month to the city. Needham told me that was the ordinance and I had to obey it. During that period the police officers hardly ever came into my place. Welch came in there with the license and collected it. I do not believe Morphy was in my house twice. I was never arrested for running that place. Weniger and Bloom never arrested me or searched my place. Mr. Johnson of the federals arrested me.

RE-DIRECT EXAMINATION

BY MR. BANDELIN:

Army Welch was never in my back room, and in front there was nothing but the confectionery.

BABE KELLY, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. BANDELIN:

My name is Babe Kelly; I am one of the defendants. I came to Mullan in 1923 and lived there off and on. In 1925 I was running a house of prostitution in Mullan. When I was in Mullan I never entered into any arrangement with Sheriff Weniger, Bloom, the police officers or anybody else as far as my business was concerned, or to run or operate it. I remember Mr. Bar-

ron. I did not sell him anything. I was in Wallace at the times he claims I sold him liquor. I went to Wallace July 3, 1928 and remained there for two months. I made donations to the City of Mullan. There was never any promise by any officer or anyone for protection so far as any law violation was concerned, and it was not discussed. I gave the money as a donation for the upkeep of the town. The witness in this case, Helen Grant, came into my place and robbed a man of \$150.00 and I had to let her go.

CROSS EXAMINATION

BY MR. LANGROISE:

Helen Grant was in my place about four months rustling. We were not handling whiskey at that time. I made some donations to the city in 1927, sometimes ten dollars, sometimes twenty-five dollars a month; by those donations I mean those payments that were made when I signed my name to the subscription, similar to Exhibits No. 2 and 7. These donations continued while I was there. I was in the Fern Apartments. There were twenty two rooms. I did not use them all, only about fifteen and I paid twenty five dollars a month to the City of Mullan all of the time I was there. That is, I was there about a year before I started to pay and paid thereafter. As far as I know it was just to help the city and I made donations in addition to that. I did not know that the license was for the sale of intoxicating liquor and that the donations were

for running a house of prostitution. Needham molested me but did not arrest me. Army Welch did not arrest me, neither did Mr. Morphy nor Mr. Florin. I was never arrested by Mr. Weniger nor Mr. Bloom. I don't remember what the twenty-five dollars a month was paid to the city for.

RE-DIRECT EXAMINATION

BY MR. BANDELIN:

I was not arrested by the police officers or by Bloom or Weniger or by the Federal officers prior to this.

MONA McDONALD, one of the defendants, testified:

DIRECT EXAMINATION

BY MR. BANDELIN:

My name is Mona McDonald; I reside in Wallace, Idaho. I went to Mullan in July, 1927, to the Coffee Cup, a house of prostitution. I was not handling liquor there. When I went there the landlady told us that the city needed funds and we girls had to donate fifteen each per month. I made the donation, and afterwards they told me it was for the benefit of the city. I handled intoxicating liquors just about a week before I was arrested; that is, not for sale. It was there for my own use. I came into court, plead guilty and was sentenced to thirty days and a fine of fifty dollars and

served that in the Kootenai County jail, and since then I have not engaged in the handling of intoxicating liquor. Nothing was ever said to me by the police officers or the officers of Shoshone County or any one else that I was to be granted any immunity for the handling of intoxicating liquor. I handled it on my own account. The beer that Johnson testified about was what I served my time for.

CROSS EXAMINATION

BY MR. LANGROISE:

The landlady told me the girls were supposed to donate fifteen dollars for the upkeep of the city and the donation was to be made each month, and I made it each month I was in Mullan. I never was molested by the police officers or by the sheriff, or any of his force. The Federals molested me in connection with the liquor charge. My understanding was that if we did not make the donation to the city we would not be permitted to operate. I made no investigation to see whether or not any one else in town other than the girls in the houses, the gambling joints and the booze joints were making donations to the city. I never looked the list over. I read the head lines; it was donations to the city. I never paid any attention to the names on the list. The amounts were written in there with pencil, and I did not pay any attention to the names on the list.

RE-DIRECT EXAMINATION

BY MR. BANDELIN:

Federal officers never arrested me for prostitution.

The testimony of Charles Cartwright, John F. Murphy, C. E. Wetherin, H. W. Ingalls, J. B. Newbury, J. B. Wilcox was admitted by Mr. Potts as to the reputation of A. J. Harwood, F. O. Welch, George Huston, Charles Ristau, J. W. Wheatley and Hartford Morphy being good, and all being honorable, upright and law abiding citizens in their community.

No cross examination.

MRS. JOHN F. GEARON, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Mrs. John F. Gearon; I am the wife of John F. Gearon, of Wallace, Idaho; have lived in Wallace about six years; been married about two years. Before that I was employed as secretary for the attorney, Walter H. Hanson. I am living in Wallace now. I recall an occasion when something was wrong in Mr. Cooper's room at the Ryan Hotel. I told Mr. Cooper to go up stairs, that the maid wanted to see him and he did. I saw the condition of Cooper's room, as evidence of Mr. Cooper having been sick; he had vomited in a slopjar and had vomited on the bedding. I know Coop-

er went upstairs. I saw him around there from April, when he came to June, when he left. I saw Rogers there during that period. I saw them both there many times when they were intoxicated.

Q. Mrs. Gearon, I will ask you if at the time Mr. Rodgers was at the Ryan Hotel between April and June, 1929, if he did not ask you if you did not call him, and you said, "No," and Rogers said, "I would have sworn I heard somebody call me down", and that you then said to him, "You have been drinking too much", or in substance, and he said, "Yes, I have been drinking so much moonshine I am sort of goofy," or words in substance to that effect?

A. Yes sir, that is true.

Q. I will ask you if the same Mr. Rodgers, in the Ryan Hotel at Wallace, Idaho at a date shortly prior to April 18th—whether or not you had this conversation with him; that you had announced something about going to Spokane April 18th, and that Mr. Rodgers came to you and told you that he was going to Spokane and register at the Davenport Hotel in his right name or in his name, and he asked you to call him up and you would have a good time, and if you did not say, "I am not that sort of a girl, you have made a mistake", or words in substance to that effect?

A. Yes sir, that is true.

CROSS EXAMINATION

BY MR. LANGROISE:

I was in Seattle during Thanksgiving of this year.

I called Mr. Rodgers at his home and asked him where Mr. Cooper was. I did not ask how he was feeling and did not tell him I had been wondering about him. I was at the Ryan Hotel, in Wallace during all of the month of March and April. I was gone a part of May; I was not there in June except one night. I was there all of April.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

My husband and myself were conducting the Ryan Hotel up to May 15th, and I was assisting my husband there.

MRS. TAYLOR, a witness called on behalf of defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

Q. Take the stand, Mrs. Taylor. Mr. Cooper, will you please step in. Mrs. Taylor, do you recognize that gentleman?

A. Yes sir.

My name is Mrs. Taylor. I reside at Wallace, Idaho; have lived there about thirty-five years. I do day work. I used to work at the Ryan Hotel. I was working there in April, 1929. I left there the 15th of May.

Mr. Cooper, who I just identified, was in the hotel and had a room there. I did the chamber work in that room.

Q. Tell the jury what the condition of that room was.

A. He had vomited in the slopjar and around the slopjar, and I refused to clean it up.

Q. Did Mr. Cooper come up to the room?

A. I watched for him and waited for him until he came up the stairs and asked him to clean it himself. He cleaned up the room. He emptied the slopjar. That is the same Cooper I identified a moment ago.

CROSS EXAMINATION

BY MR. LANGROISE:

I was working for Mrs. Gearon.

JOHN F. GEARON, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is John F. Gearon; I live in Wallace; have lived there thirty-five years. P. J. Gearon, of Gearon Brothers, was my father; My mother owns the Ryan Hotel in Wallace. My wife and I were conducting the hotel up to May 15th. I know Cooper and Rodgers, the government witnesses here; I saw them around there

and saw them intoxicated. I did not count how many times but every few days they would get drunk.

CROSS EXAMINATION

BY MR. LANGROISE:

They were quite drunk. Mr. Rogers could pack his liquor better than Cooper, but Cooper was very drunk a number of times. I did not ask them to leave the hotel. I was running the hotel.

JOE GOGGAN, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Joe Goggin; I reside in Wallace; have resided there about twenty-one years; am in the mining game and on the fire department; I am now in the mining game. I know Cooper, one of the government witnesses. I saw him when he was stopping at the Ryan Hotel between April and June, 1929. I saw him drunk around there. I had occasion to help take him upstairs when he was drunk. The night clerk helped me take him up.

CROSS EXAMINATION

BY MR. LANGROISE:

I spend a good deal of time at the Ryan Hotel, but

stayed at the fire department. The reason I was up there was I knew the night clerk and the day clerk and was just visiting with them. I have been doing that for the last year. Nights was the only times I was in there. I knew Cooper pretty well. I ate with him. I am related to Googin in the sheriff's office; who is a deputy sheriff; he is an uncle of mine.

MATHEW McDOUGAL PATTERSON, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Mathew McDougal Patterson; I am thirty seven years old. I reside at the Ryan Hotel, Wallace. I am a hotel clerk. I was there since the 15th of May, 1929. I saw McGill, the witness, around there during the Elks' Convention.

Q. I will ask you whether or not in a conversation with you in the Ryan Hotel in the middle of June, 1929, you and McGill alone being present, he did not state to you that he was bottling beer for Jim Bottenelli for the Elks' Convention, or words in substance to that effect?

A. Yes, sir, he told me that.

I know Cooper, the government witness here. I remember an incident when he was going to the dance at Cataldo. He came down stairs drunk. I was sitting right beside the door and he said he was going to the

dance at Cataldo, and I says, "You are drunk, you had better go back up to bed again." "No", he says, "I ain't drunk", and he went out and got in his car, and I even followed him out on the sidewalk to when he got in the car, I told him to go back up and go to bed." "No", he said, he was going on to the dance and to tell Rogers that he went to the dance to Cataldo.

Q. I will ask you whether on any occasion you called this man Cooper aside, any occasion while he was stopping there, and said in words and substance as follows: "Business is a little quiet around here and I am on night clerk duty working at a small salary here and occasionally I run in a girl or two, and if you want any company for the night or something, I would be glad to help you out." Did anything of that kind occur?

A. No, sir, never.

Q. And did you say, "I will call your attention that there is one in thirty one across from you." Did anything of that kind occur?

A. No sir.

Q. Now, what did take place with reference to that woman?

A. Well, it seems he came in on the 4th of June and this lady came in on the same day, and he went up to his room in the afternoon, and he claimed this lady was sitting in a chair and she gave him a smile as he was going into his room, and when he came down, when I came on shift—this must have been between seven and nine—he wanted me to give him an introduction to her, and I would not do it. I told him this jane was just seven-

teen years old and she was a married woman. Then he offered me a bottle of Canadian sealed goods if I would give him an introduction to her, and I said I would not do it.

He said he was going to rap on her door, and I said, "If you go near that door, I will see you get your ass in the can"; that is just what I said. I saw Cooper around there from the 15th of May until I left. I saw him drunk around there and talked to him on the night of June 4th. I talked to Rogers on June 4th about half an hour later. It was sometime around June 15th that they left. I remember that they removed from room thirty-one to rooms fifty-two and fifty four. Little Cooper claimed there was someone came into the hotel the night before and tried to knock on his door and wanted to take him for a ride. He said he pulled his gun and said he would shoot them full of lead if they ever broke into his room, so these fellows went away, according to him and I asked him if they came back again. "Well", he says. "I don't know, I went up and slept with Mr. Rogers; "he was up in room thirty-three on the top floor.

They changed into room fifty-two and fifty-four that same day, and Little Cooper asked me to give him some protection.

CROSS EXAMINATION

BY MR. LANGROISE:

I took Cooper up to bed one night drunk. June 4th.

and I took him up on the night of June 7th, the night the circus was in town. I saw him around there frequently intoxicated and I saw Rogers around there drunk. I Packed Cooper up to his room June 4th and June 7th. Joe Goggin helped me and I saw Joe Goggin take him up on June 4th. Joe Carbonneau and I took him up another time. I do not know Joe Carbonneau's business. Do not know he is a bartender around Wallace. I do not know where he works or what he does; did not know a thing about him. June 4th was the first time I had seen them drunk but they had been drunk around there all the time. That is the first time I saw them under the influence directly, and that was the time that Cooper wanted the introduction to the jane. I do not know whether they were there on June 5th. I know on June 6th I was talking to Little Cooper and this lady's husband came back to the hotel and broke down the door the night of June 5th and on June 6th Little Cooper came to me and said he would help me out at the hotel. He says, "I will get a gun and I will put it in my sock and I will help you out in case there is any trouble around there." I said, "I don't have to be helped out, I can do that myself."

I do not know whether Cooper and Rodgers were there on the 7th and 8th; do not know what time they checked out. I took them up to the room on June 4th and 7th. I did not ask them to leave the hotel or check out. It was a common thing to help drunks up to their rooms in the Ryan Hotel. It was a frequent occur-

rence. "Janes" was the name for young ladies around there. I did not know anything about Joe Carbonneau. I did not see him until that night, until he helped pack these people upstairs. I didn't know him after that, and I didn't know where the Sideboard was. I met McGill during the Elks' Convention about the 17th of June. He was bottling beer for the Elks'. I never told anybody about it. I did not tell Weniger about it.

SARAH GEARON, a witness called on behalf of defendants, testified:

BY MR. NUZUM:

My name is Sarah Gearon. I reside at Wallace, Idaho. My husband's name was Patrick J. I have lived in Wallace about thirty-eight years. My husband was engaged in mining there for a long period of time. I am the owner of the Ryan Hotel and am now conducting it. My son and his wife conducted it from September until the 15th of May, 1929. I have been conducting it since. I know Rogers and Cooper, the federal agents. Saw them there many times. Saw them drunk many times. I remember when they left on the 15th of June. I remember they went over to the Sheriff's office. They came back and talked to me. I was inside the desk and saw Weniger take them over to the office, and then Rogers hung around the desk I should judge for around an hour or an hour and a half, and he talked, and said how there had been about fifty Fed-

eral men in there, and he was the only one that had ever accomplished anything. In fact, he told me that many times, and he told me that at that particular time.

They were both around there for quite a while afterwards, an hour or an hour and a half, and then they went and were in their room all afternoon. They had moved into two adjoining rooms, 52 and 54, and they were in those rooms until 11:30 that night. They checked out then and did not want to pay for the rooms because they had not occupied the beds.

They had been around the rooms, the rooms were all out of order, and the maids were off duty, and I went up and put the rooms back in order so that I could rent them that night again.

Q. I will ask you, Mrs. Gearon, if on the evening of June 13th, 1929, if in your apartment in the Ryan Hotel, Wallace, Idaho, you had a conversation with Mr. Rogers, Donald B. Rogers, government witness, and that at that time he had a half pint of whisky and that he offered you a drink, and that he stayed about an hour and a half, and if you didn't ask him what his business was, saying that you didn't think he was a mining man, or a lawyer, and if he was not a Federal agent, and that he said he was, in words and substance, to that effect?

A. Yes, I did.

My apartment, which Donald B. Rogers went to that night was a five room apartment back of the lobby on the main floor and it was in that apartment in the evening where we had the conversation.

CROSS EXAMINATION**BY MR. LANGROISE:**

Mr. Rogers was in my apartment three times in all. Rogers and Cooper were drunk around there a good deal. Cooper was offensive to patrons. He would get drunk and come up to the desk. I did not ask them to check out. I saw very little of them until the middle of May because my son was running the hotel before that. Cooper was there after I took the hotel, and he checked out. I saw Rogers during that period of time and they were drinking a good deal during that period.

E. A. HALVORSON, a witness on behalf of defendants, testified:

DIRECT EXAMINATION**BY MR. NUZUM:**

My name is E. A. Halvorson; I reside in Wallace, Idaho. I was night clerk from April 1st until May 15th at the Ryan Hotel and day clerk from that time on. I saw Rogers and McGill during that time when I was on the night shift. Patterson succeeded me as night clerk. I have seen Rogers and Cooper under the influence of liquor, and I saw McGill there to. I remember the occasion when Rogers and Cooper went over to Weniger's office. They left the hotel that night. After they had been taken up to the Sheriff's office, about an hour afterwards, Rogers came down and talk-

ed to me about it. He said he had been pinched and he showed his credentials and they had to let him go, and they were around there all that afternoon so far as I can remember.

Q. Did Cooper stay around there, or did Cooper leave immediately after they got back?

A. I seen him around there.

Q. Around the hotel?

A. Yes.

I remember changing their rooms to rooms 52 and 54. It was the night of the 14th, I believe, that Cooper made the complaint, that somebody was coming up the back stairway; on the morning of the 15th he came and said he had slept with Rogers that night, and asked that they be changed together, that is, two adjoining rooms together, so I reserved 52 and 54 for them for that night. When I came on the next morning they had gone.

CROSS EXAMINATION

BY MR. LANGROISE:

I checked over the records of the hotel before I came down so I would be accurate. Rogers and Cooper were not drunk on the 15th but both of them were drunk on the 14th and 13th. They were pretty well under the influence of liquor. I had no trouble in handling them. They could take care of themselves. I saw Cooper quite a few times under the influence of

liquor but not Rogers. I saw quite a bit of them in the afternoon when I was on the day shift. Cooper registered in, I think, on June 4th. I think he checked out in April. I would not swear to the exact date, that I saw him drunk or sober. I got the dates on the record. I saw them go out of the hotel on the morning of the 15th, and that is all I saw. I do not believe that was the 15th. As I remember this incident occurred two or three days before they left. I do not think they left the same day the sheriff picked them up.

LUCILE ANDERSON, a witness on behalf of defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Lucile Anderson. I reside at Mullan. I wait on the table at the Good Eats Cafe and I know A. H. McGill who was a miner up there and who ran a cafe or soft drink parlor. I saw him in our dining room in April, 1929.

Q. I will ask you, Miss Anderson, whether or not in the conversation in your dining room in April, 1929, yourself, McGill's wife and McGill being present, if McGill didn't state in that conversation that he wanted Bloom to collect some money that was supposed to be owing to him from Charles Fond, and that Bloom would have nothing to do with it, and that then he said,

“I am going to fix that son of a bitch Bloom”, and that “I am going to raise a lot of Hell, and I will be the man to give testimony against Bloom and Weniger”, or words to that effect and substance?

A. Yes.

Q. Do you know the general reputation, in Mullan, Idaho, which Anthony, or “Tony” McGill bears for truth and veracity?

A. Yes.

Q. Is it good or bad?

A. Bad.

CROSS EXAMINATION

BY MR. LANGROISE:

I am certain on this occasion that Mr. Nuzum has asked me about. It occurred at that time. I am positive of it.

MRS. ALICE STEPHENS, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Mrs. Alice Stephens; I live at Mullan, Idaho. I am married. My husband and myself run the Stephens Hotel. We were conducting it in 1927

and 1928. I know Needham, the chief of police. I know the house that he had at Mullan, Idaho. I know Margaret McConnell. She was running that house and was a prostitute. Needham charged her forty dollars a month to start with and after he made some repairs raised it to fifty dollars. Needham told me he collected money from her as a prostitute and for selling beer. I have known Needham for five years. I know his general reputation in Mullan, Idaho for truth and veracity and it is bad.

CROSS EXAMINATION

BY MR. RAY:

I have known Margaret McConnell for sixty days altogether. The nature of the acquaintance was she came to the hotel with her husband. He was a miner and worked in the mine. They stayed at the hotel thirty days. The first thirty days I knew her as Victor McConnell's wife and thereafter as a prostitute.

Q. How did you come to know that?

A. Well, in a general way, miners boarding with me have said that they have frequented her place, and she admitted it herself. Her husband and her were separated.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

I went there to collect a board bill. When I got

there I saw eight or ten miners drinking beer and Needham was present.

THOMAS CAMPBELL, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Thomas Campbell; I live in Mullan; have lived there for seven years. I am garbage man for the City of Mullan. I have known, Needham, ex-chief of police, ever since he came to Mullan and was chief of police in 1927. I know the general reputation of Needham for truth and veracity in Mullan. It is bad.

NORMAN EBLEY, a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Norman Ebley; I live in Wallace; I am bank clerk, in the Wallace Bank & Trust Company; have lived in Mullan since 1890. I know Needham. I know his general reputation in the community in which he resides as to truth and veracity to be bad.

H. R. WILCOX, a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

I am connected with the First National Bank of Mullan; have been for twenty-two years. I have known Mr. Needham, Exchief of Police of Mullan for twenty-two years. I know his general reputation in that community for truth and veracity. It is not good. It is bad.

CROSS EXAMINATION

BY MR. RAY:

Mr. Needham carried a bank account in my bank. I do not remember paying checks sometimes when the account became overdrawn.

ARTHUR BRITTON, a witness on behalf of defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Arthur Britton; I live at Mullan; I worked for the Federal Mining & Smelting Company for fifteen years as shift boss. I have known Needham

for fifteen years. I know his general reputation in Mullan for truth and veracity. It is bad.

CROSS EXAMINATION

BY MR. LANGROISE:

That has been true for all of those fifteen years.

CHARLES A. DRISCOLL, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Charles A. Driscoll; I reside at Mullan, Idaho. I have lived there four and a half years. I am a miner; that is a leaser. I know Needham, the ex-chief of police at Mullan; have known him for about three years. I know his general reputation in the community for truth and veracity. It is bad.

CROSS EXAMINATION

BY MR. LANGROISE:

I did not know him prior to the time he became chief of police.

WALTER FRANK, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Walter Frank. I reside at Wallace, Idaho; have lived there twenty-three years. I know A. H. McGill; have known him a little better than a year. I know his general reputation in Wallace and in Mullan for truth and veracity. It is bad.

JOHN W. MURPHY, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is John W. Murphy; I reside at Wallace; am in the restaurant business; have been engaged in business there about eight years. Have lived in the Coeur d'Alenes sixteen years. I know Anthony H. McGill; have known him about three years. I know his general reputation in Wallace and Mullan community for truth and veracity. It is bad.

CROSS EXAMINATION

BY MR. LANGROISE:

I have lived in Ryan Hotel, Wallace, for about six years. I am friendly with Weniger; I know him quite well; have known him for a long time. I have some business with him. Weniger and I board the prisoners

in the jail and the county pays me for it.

RAMSEY M. WALKER, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Ramsey W. Walker; my residence is Wallace, Idaho; have lived there nearly nineteen years. I am in the banking business; connected with the Wallace Bank & Trust Company, as Vice President and General Manager. I know the defendant Weniger; have known him between fifteen and twenty years. I know what business he has been engaged in. I know his reputation in Wallace as being an honorable, upright, law abiding citizen; it is good.

HARRY F. DAY, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Harry L. Day. I have lived in the Wallace country about forty-three years; my business has been mining principally; was connected with the Hercules and various other operations. I know Sheriff Weniger; have known him for sixteen or seventeen

years, fairly intimately. He worked for me when I was managing the Federal; he was office man and time-keeper at the Last Chance Mine. I have known him in his official position. I know his general reputation in the community in which he resides as to being an honorable, upright, law-abiding citizen. It is excellent in my judgment.

MILTON J. FLORH, a witness called on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Milton J. Flohr; I reside in Wallace, Idaho; have lived in the Coeur d'Alens for thirty-four years, in Wallace about the entire time. I am a banker, connected with the First National Bank of Wallace. I have known Mr. Weniger about ten or twelve years. I am acquainted with the general reputation which he bears in this community in which he resides as to be an honorable, upright, law-abiding citizen. It is good.

I also know Charles Bloom, a deputy sheriff, and have known him about six years. I know his general reputation as to being an honorable, upright and law-abiding citizen in the community. It is good.

NORMAN EBLY, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

I have lived in the Coeur d'Alenes a great many years. I am with the Wallace Bank & Trust Company of Wallace. I am acquainted with Sheriff Weniger, defendant in this case. I have known him since about 1915. I know the general reputation he bears in the community in which he resides as to being an honorable, upright, law-abiding citizen. It is good.

I know Charles Bloom; have known him for twenty-five years in and about Mullan and Wallace. I know the general reputation which he bears in the community in which he resides as to being an honorable, upright, law-abiding citizen. It is good.

DR. T. R. MASON, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is T. R. Mason; I am a physician and surgeon, practicing my profession at Kellogg, Idaho; have been so engaged thirty-one years. I was mayor of Kellogg for ten years up until this spring. I am acquainted with Sheriff Weniger. Have known him for twenty years; know him well. I know the general reputation which he bears in Wallace and vicinity as to being an honorable, upright, law-abiding citizen. It is good.

A. H. FEATHERSTONE, called as a witness on behalf of defendants, testified;

DIRECT EXAMINATION

BY MR. NUZUM:

My name is A. H. Featherstone; I am district judge of the First Judicial District of Idaho; have been for nine years; prior to that time I was a practicing attorney, in Wallace, Idaho; have lived in the Coeur d'Alenes for thirty-one years. I am acquainted with Sheriff Weniger; have known him since 1919. Our acquaintance has been quite intimate. I know the general reputation he bears in the community in which he resides as to being an honorable, upright, law-abiding citizen. It is good.

CHARLES CARTWRIGHT, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

I have already been sworn as a witness. I remember an incident in the summer of 1928 when I was sitting talking with Mr. Weniger in front of the courthouse in Wallace and something occurred with reference to a man striking a woman. I was talking with Weniger and Mr. Bloom and I heard some loud talking across the street, and looked over and saw a man hit a woman

and knock her in the street. I did not know who these people were. I heard some loud talking but could not understand what they said, and I saw the woman fall on the street; saw the man strike her. I have known Mr. Bloom for twenty-two years. I know the general reputation which he bears in Mullan and Wallace as to being an honorable, upright, law-abiding citizen. It is very good.

ALEX D. WALLACE, called as a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Alex D. Wallace; I reside in Wallace, Idaho. I am a butcher. I have lived there twenty-two years and in that business all of the time. I know Charles Bloom; have known him for ten years. I know the general reputation he bears in Mullan and Wallace as to being an upright, honorable, law-abiding citizen; it is good.

JAMES L. MARTIN, a witness called on behalf of defendants, testified:

CROSS EXAMINATION

BY MR. NUZUM:

I have testified before in this case. I am acquainted

with Deputy Sheriff Bloom; have known him for fourteen years. I know the general reputation he bears in the community in which he resides as to being an honorable, upright and law-abiding citizen. It is good.

J. B. WILCOX, being called as a witness on behalf of the defendants testified:

DIRECT EXAMINATION

BY MR. NUZUM:

I have heretofore been sworn as a witness in this case. I have known Charles Bloom for about twenty two years; I know the general reputation which he bears in the community in which he resides as to being an honorable, upright, law-abiding citizen; it is good.

ROY SMITH, called as a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Roy Smith; I live at Mullan; my occupation is stage operator; have been engaged in the operation of stages for four years; have lived in Mullan fifteen years; I know Anthony McGill; I know his general reputation in that community for truth and veracity. It is bad.

GEORGE A. DRISCOLL, called as a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is George A. Driscoll; I know Anthony McGill; have known him two and a half years. I know his general reputation in Mullan, as to truth and veracity; it is very bad.

THOMAS CAMPBELL, called as a witness on behalf of defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Thomas Campbell; I have testified before in this case. I know Anthony McGill; have known him about two years. I know his general reputation which he bears in Mullan and vicinity for truth and veracity; it is bad.

WILBUR DISBROW, a witness called on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Wilbur Disbrow; I live at Osborne.

Idaho. I am now confined in the Kootenai County Jail on plea of guilty to possessing liquor; was sentenced for eleven months last May and have been serving my time ever since. I have seen McGill, who ran the Mullan Inn, only three times. I know him when I see him. I was in the Mullan Inn only once when I was there, about the middle of September, with my son in law, Louis Ingebretson. I went there to see Vontella, a resident of Mullan, who formerly ran the place. Ingebretson and I were the only ones in the Mullan Inn at the time. I know Sheriff Weniger. He was not there. I know Gundlach, who used to be prosecuting attorney; he was not there. The only ones there were my son-in-law, McGill and myself.

CROSS EXAMINATION

BY MR. LANGROISE:

I was apprehended by the Federal officers in Shoshone county; I talked to McGill something about beer that evening. I was wholesaling beer generally through out that country. There was no one there but McGill, my son-in-law and myself. It was in the evening, the middle of September; not later than the middle of September, 1928. I know Charles Bloom, the deputy sheriff. He came to Sandpoint while I was in jail there and served some papers on me. He saw me once before that. He talked to me a few minutes. It was quite a while after the Federal officers had been up to see me, a couple of weeks. Bloom did not talk to me

about Charlie Fond and he did not have any business with me.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

Rogers was the federal agent who came to see me while I was in jail.

Q. Did he ask you whether or not you would corroborate McGill about Weniger being—

MR. LANGROISE: Now, I object to that, I do not think it proper to ask what he asked him.

THE COURT: Sustained.

MR. NUZUM: Exception.

A. I was brought up here from Sandpoint by Mr. Breashears. Have been here a little over a month. The Federal officers interviewed me in jail here about McGill. They had McGill down there. I told them I was never there when Weniger was there.

RE-CROSS EXAMINATION

BY MR. LANGROISE:

I was here as a witness before the Grand Jury in another case, and I have been kept by the Federals here ever since.

LOUIS INGEBRETSON, called as witness on behalf of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Louis Ingebretson; I work in the Morning mine for the Federal Mining & Smelting Company; have worked there fourteen months. Am married; my wife is the daughter of Mr. Disbrow. In the fall of 1928 I was injured by a fall in the Morning Mine, injuring my finger. During that period I was in the Mullan Inn with my father-in-law, Mr. Disbrow; it was sometime in September. There was just the bartender, my father-in-law and myself. I know Mr. Weniger, the sheriff, by sight. He was not there. I do not know Mr. Gundlach, who used to be prosecuting attorney. That is the only time I have been in there. I did not know what my father-in-law wanted.

CROSS EXAMINATION

BY MR. LANGROISE:

I do not know whether he was soliciting business for beer. I just happened to go in there.

JACK MALLOY, one of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

I am one of the defendants in this case. I am now

in jail; was sentenced November 25th for seven months and \$250.00 fine for the sale of intoxicating liquor, and am still in jail, serving in the Kootenai County jail. I heard the testimony of McGill when he said something about Federal raids. I was in there the evening of the threatened Federal raid. It was on the 26th of December, the evening after Christmas. Bloom was not in there that day. I saw Bloom in the Mullan Inn once. A couple of evenings before Christmas he brought me a letter addressed by my sister from the Sheriff's office. McGill was behind the bar and Bloom came in and he said "Is there a man named Malloy here?" I said "Yes". He said, "There is a letter, give him that." That is the only time I ever saw him in the house.

CROSS EXAMINATION

BY MR. LANGROISE:

I was working there a few hours off and on when McGill would go out. I didn't hear anything of the Federal raid the evening before Christmas. Somebody might have tipped it off. I saw McGill taking the stuff out and others helping him.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

It was a young fellow that lived with him. I do not

know his name; a young fellow about eighteen years old; he used to drive his car; he was helping McGill.

CHARLES FOND, one of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Charles Fond. I am one of the defendants here. I am now confined in the Kootenai County jail, brought over for this trial. Was sentenced June last for violation of the National Prohibition law; I was sentenced for ten months. I heard the testimony of Mr. McGill with reference to Sheriff Weniger coming to my place with Gundlach shortly before the election in 1928. Sheriff Weniger was never in my place with Gundlach or anybody else to my knowledge. Weniger was not drinking there as testified to by McGill. I heard the testimony of McGill that I ordered him to give Bloom thirty dollars. I know nothing about that. I never told him to give him any money. I never drank with Bloom in my place or had drinks with him. I might have done so before the dry laws went into effect, but never since. He never took a drink in my place that I know of. I never knew of McGill giving him any money or never did McGill represent to me that he had given him thirty dollars.

CROSS EXAMINATION

BY MR. LANGROISE:

I ran the Bilberg Bar and hotel; it was my place. My step-sons were clerking at the Bilberg bar. I was supervising it but I was never working there. I paid them a salary and took the profits. It was engaged in the soft drinks and near beer and a few card games; candy and cigars, tobacco and stuff of that kind. That is all as far as I know. I cannot say that I knew of them selling whiskey over the bar. I had nothing to do with that part of it. I had nothing to do with buying the beer and whiskey. I was not interested in the Mullan Inn except I helped purchase the place. McGill came to me in August, 1928 and wanted work. I told him about a person by the name of Johnson that had a place on Hunter Avenue he wanted to sell and possibly he might make arrangements whereby he could buy. I did not put up any money for that. Johnson asked me if McGill wanted it; said it would be all right with him because he would like to get rid of the place. It was Charley Johnson who used to be trustee of Mullan and the Mayor up to the time of his death. I did not furnish the whiskey for the Mullan Inn or the beer. I had nothing to do with that part of it.

REDIRECT EXAMINATION

BY MR. NUZUM:

Johnson used to be a mill man in the Morning Mine;

he was superintendent of the Morning Mill and is the one McGill bought from.

F. F. GUNDLACH, called as a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is F. F. Gunlack; I am a lawyer; residence in Wallace, Idaho; have been practicing about thirty years. I was prosecuting attorney in Shoshone County for two years. I am very well acquainted with Mr. Weniger.

Q. Were you in the Mullan Inn with Mr. Weniger at any time in 1928?

A. No sir, and at no other time.

I had some business for Mr. Fond and I was in the Bilberg Hotel but never with Mr. Weniger. I did not go out campaigning at all with Mr. Weniger during the 1928 campaign, and never was in any place with him during that campaign.

CROSS EXAMINATION

BY MR. LANGROISE:

I was a candidate for prosecuting attorney in 1928.

R. F. WENIGER, a witness called on behalf of the defendants, and one of the defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is R. E. Weniger; I am forty-five years old; have lived in Shoshone County twenty-two years past. Prior to come there I was employed as a book-keeper in the Fidelity National Bank at Spokane and also for McGowan Brothers, in Spokane, Washington. I attended the Blair Business College in Spokane about a year. I am married; have a wife and four children; been married about fifteen years. After coming to the Coeur d'Alene country I worked for the Last Chance Mine of the Federal Mining Company at Wardner for three or four years; later I was interested in a lease at Wardner Mike Savage; I left the employ of the Last Chance when I was elected Probate Judge in 1913 and held that office six years; the terms are two years and I was elected three times. Then I was defeated and after I left, the life insurance business for two years; was elected sheriff in the fall of 1922 and took office in January, 1923. I have been elected four times since then and am now serving. Shoshone County is about fifty miles north and south and about thirty-five miles east and west; it is very rocky and mountainous and only has one main highway through it. There are four towns, Kellogg, Wallace, Mullan and Burke and a few smaller places like Murray, Kingston, Osborn and Avery and Cataldo. Avery is forty miles south of Wallace, and to get there you have to go into Montana by highway and get down through the St. Joe River to Avery or

we can go around by St. Maries and go up there. Outside of the villages and little towns, there are smaller settlements, the mines, like the Tamarack & Custer Mining Company, up on the mountain and lots of mining properties around Murray, a lease up above the Morning Mine & Mullan, and up Pine Creek there are several properties working, and the Sunshine on Big Creek. In a town like Mullan some of the plants are within the city limits or just on the edge of the city limits. There is a variety of races or peoples in the county. The town of Mullan the population is composed mostly of Finnish people and a few Austrians; around Kellogg and Wardner, the population is Italians and Servians and a mixture of them, and Americans, and around Burke they are mostly Irish and Missourians, and Wallace is a business city and has a mixtures of all kinds. I have six deputies. One deputy is located at Avery, Idaho, one at Burke, Idaho, one at Kellogg and three in Wallace. In Wallace there are two deputies in the office. The office deputies are occupied in the office. There is a lot of civil business in Shoshone County in the line of attachments and service of summons and so forth, sales of mining properties and executions, and it takes almost the entire time of the two deputies there to do the work and keep the office records in proper shape. In the sale of mining properties we have to describe the property very thoroughly in regard to the lines and boundaries and the survey lines and post notices in those places where the claims are located. The description in the sale of mining property is quite

involved. We have in the neighborhood of twenty a year of those. We have considerable civil business that comes in from outside points that has to be attended to, in the way of serving papers for outside places, like divorce cases and looking up people for the outside sheriffs. We get quite a proportion of the business from the justice courts in Mullan and places near, Wallace and Kellogg for service in different parts of the county.

Q. Mr. Webb has testified about an interview that he had with you sometime shortly after you were inducted into the office of sheriff, in which he said you told him that you would not do anything under the prohibition law or would not arrest bootleggers, or something of that kind. Did you have any such interview with Webb?

A. I never made the statement he said.

Q. Well, what did you say to him?

A. I never said that I would forbid my officers to work with the Federal Officials like he said. I don't recall just what the statements were, but it was not that.

In 1924 we collected \$3,975.00 in liquor fines and about seven stills. In 1925 we collected \$4,300.00 in fines and I believe there were three stills taken that year. In 1926 about \$1,000.00 in fines and no stills; in 1927 it was around a thousand dollars in fines that year.

Q. Was there any ruling of the Supreme Court that handicapped you in 1927?

A. There was.

MR. RAY: Just a moment, if your Honor please. we object to both the form of the question and—

THE COURT: The objection is sustained.

MR. NUZUM: Q. Well, from that time on, from March, 1927, what did you do with reference to the enforcement of the State prohibition law?

A. Anybody that wanted to make a complaint about anyone would have to produce the evidence and the facts in the case and we would get an affidavit before we would make an arrest.

I do not know how many cases I had in 1927 or 1928. but in 1928 about six or seven cases is about all on record. After refreshing my memory by looking at the records, I made during the years 1925, 1926, 1927 and 1928 and 1929, eleven hundred and five arrests. It included every kind of a law violation that came up in the county during that time, murder or rape, or any case like that; there were some liquor violations, quite a few in this first part of it. There was considerable battery and assault cases, defrauding boarding house keepers and murders—seven or eight rape cases, murder cases and all general law violations. I have a fee report there that we collected fees for civil work accomplished in the county during those years. I did not count the cases. The report is just

for each case. For the quarter ending March 31, 1925 there were approximately one hundred forty different transactions and ending June 30, 1925 there were about one hundred and forty approximately; the quarter ending September 30, 1925, two hundred; the quarter ending March 31, 1926, one hundred and seventy five; the report of fees ending March 31, 1927, two hundred. They are for work done in serving civil documents. It took up all the way from one mile to fifty miles of service. I had but one automobile. I had one deputy in Wallace outside of the ones at Burke, Kellogg and Avery: and one deputy that helped me, Mr. Bloom. He also took care of the jail. During the first three years the force was intact and there was not any sickness. After that the last three or four years the deputies have been off on sick leaves on several occasions. Mr. Bloom was away for five months in 1928 and Glahe was off prior to that for three months about, on an operation, and my deputy at Avery was off for about three or four months on an operation and when that resulted we had to do the work ourselves and double up. Bloom was out for several months in 1927, not a whole month but probably three weeks out of the month on the sickness that resulted in the operation later on. I did not exactly request of the county commissioners to have additional help with reference to the enforcement of the State Prohibition Law. It was not exactly on the enforcement of the prohibition law. I asked them for additional help on two different occasions as we were get-

ting crowded and wore out in many cases there from doing this amount of civil work, and they told me at that time that the budget was all we had to work under and we had to comply with the budget and they did not give me any more men nor make any effort to relieve the situation. They took some money away from me that I did have in the budget. In the year 1927 they requested me to release the wages or salary of a traffic officer for about six months, amounting to seven hundred fifty dollars of my service money out of a special fund I had of a thousand dollars, and in the year 1928 or 1929 they took away eight hundred dollars; that is this year, for traffic, to pay the salary of a state traffic officer. There was a meeting called by the county commissioners in 1927 to discuss the enforcement of the law. The county commissioners requested the prosecuting attorney to advise all officers in Shoshone County to meet on a certain date. I forget the date, a week after and discuss law enforcement matters in Shoshone County. Mr. Horning notified the respective police officers and mayors of the respective cities of Shoshone County and I was present. Mr. Horning and Mr. Woods were there, the county commissioners of Shoshone County and the Mayor of Wallace, Harry Tool, and Mr. Bailey, the Chief of Police, myself and the prosecuting attorney, Mr. Horning.

Q. The others did not attend?

A. Nobody else attended.

Q. What, if anything, did you state to them then?

A. Mr. Horning brought the matter up about the intention of meeting and asked Mr. Wood to state what the meeting was for and what he wanted to discuss with the people present, and Mr. Woods stated that he thought we ought to get together and have a little law enforcement around Shoshone County, that he thought there was a little too much liquor around there and gambling, and so forth, and I told him that I could very easily clean up Shoshone County if they would provide the necessary deputies, officers, and another car and fix up the jail so we could accommodate prisoners. Our jail only holds sixteen, and I suggested that they get the old Sunset Brewery and fix it up for a jailhouse, and I told them at that time that I would certainly clean up the county if I had the men to do it with, Mr. Woods stated he did not think it necessary to go that strong, but he thought a few of them ought to be picked up around, cleaned up. I told him that I was doing all that I possibly could with the force that I had.

Q. Did you say anything to him about giving you the proper information also, Mr. Weniger?

A. Yes sir, I told him that anybody that came and gave me the proper information as to law violations that would state what was going on around, if they knew, of their own knowledge, would make an affidavit to that effect, that I would attend to it.

Q. You would get a search warrant and go after it?

A. Yes sir, I would get a search warrant and go after it, that is the substance of the conversation.

With reference to the conversation with Johnson and Webb about Barron, the way I recall that matter, we had arrested Barron and taken him down to jail, Mr. Bloom and myself, and Mr. Needham came in for some reason or other, I don't know what he was down to the jail for, and I was booking Mr. Barron at the time, and I believe I put him back in the jail. I don't recall that he was even present when Mr. Johnson came in, but I think after they came in he knocked on the door and he came in. I called Barron out, had him brought out, rather, and I asked Mr. Julius Johnson and Mr. Webb if this man was working for them, or if he was just a common, ordinary, stool pigeon and Johnson stated that he was not working for the Federal Department, and I placed Mr. Barron back in the cell in jail.

Q. Was there any further conversation between Webb and Needham in which you joined?

A. Yes sir, something came up, I cannot recall just what the trouble was, in fact, I did not pay so much attention to what they were talking about, any more than I remember that I said something to Mr. Webb that I thought that Needham could take care of his town up there without having the Federal Department bawling him out down there in the jail, and I took it to myself that he was bawling me out, the way he said it. I cannot remember the exact remarks.

something about the officers not doing this or that, and Mr. Webb said he did not mean it in that conversation. So I said, "That is all right," or something to that effect. It did not amount to nothing, it was just a petty larceny matter in the first place. Mr. Cartwright, the superintendent of the Gold Hunter Mine, and myself were standing kind of back of his car by the Court House talking, and Charley said to me, "Come out of the Court House and come out here", and just about that time I heard some noise across the street of somebody swearing and calling some names, a woman talking, and I looked around over the car and so did Mr. Cartwright, and we saw Mr. Barron knock this woman down, and she fell off of the sidewalk into the gutter there in front of where the Worstell Furniture Store is, right opposite the court house, and I ran across the street and I asked this man what he meant by hitting this woman, and he said, "She called me a son-of-a-bitch", and I said, "You had not any business striking a woman anyway," and I said, "You come on with us", and I took her over with me to the jail, both of them. I had seen this woman before, in fact, she had been in trouble there on one or two occasions with her husband, this Mrs. Beesley, her name was. She has changed her name since, she got married or something. I said, "What do you want to do, want to have him arrested?" And she says, "I certainly do; he has been up around my place in Mullan bothering me", she says, "And I loaned him five dollars." And she went over and got a warrant from Justice of the

Peace Lahey and brought the warrant back, and it was a warrant for assault with intent to kill, and I told her that was not the proper kind of a warrant, to go up to Mr. Horning and get the right warrant, get a battery warrant, which she did later on in the morning.

Barron was taken before Judge Sherrard, the probate judge, on August 9th and sentenced to thirty days in jail and one hundred dollars fine. Fitzgerald, his lawyer, was present. He plead guilty. He then went up to Horning. He wanted to see Mr. Horning and my deputy sheriff Chapman took him up to Horning. I was not present at all. I never promised him anything about his getting off with a fine of ten dollars and costs if he would plead guilty. I never had any conversation with him about it. I did not take him up the morning he plead guilty but I walked in and heard him enter his plea. He said nothing to me about being beaten up. I saw no marks on him and he never mentioned that anybody had hit him or abused him in the jail. I never knew where McGill's place was. I was never there in all my life. I was never any place with Gunlack campaigning in the fall of 1928. In reference to the Bilberg, I have been in there several times. I go in there occasionally to check the records in there, the hotel register. I was not in the Bilberg on the occasion McGill testified about and was never there with Gunlack. I never took a drink of liquor in the Bilberg or any other place in Shoshone County. With reference to the incident of my taking McGill to the Sheriff's office from the hotel, I heard something that

caused me to have McGill come up. I sent Mr. Chapman and Mr. Bloom over to bring him to the Sheriff's Office, and they did, and I asked him if he had made these statements around town and especially in the Ryan Hotel, and he denied it to me. He said he had not made the statements, and I said, "What are you doing around here?" And he said he was recovering from an injury or something and was staying at the Ryan Hotel for a few days, and I told him he had better get something to do, that I understood he was around making a talk, and I released him at that time. I just asked him a few questions.

With reference to my threatening to have Barron deported, I questioned him on that point. We had forms provided for that, and we have to find out whether they are citizens or not for the purpose of the Federal Department, and he said he was from Canada and I asked him if he was a citizen of the United States or not, and he said he had been over here about six months, I think his remark was, that he was not a citizen here, that he did not have any papers any more than first papers, I think he said first papers. When we arrest anybody we keep a record of whether they are citizens or not and how long they have been in the country and so forth and the description. That is practically all I said to him about it.

With reference to the incident with Cooper and Rogers, Mr. Simmons, of the National Detective Agency in Spokane, who has on several occasions come

to my office and assisted in trying to find check artists, called on me one morning, on the 15th of June, I think it was, and told me that he had two bun checks that he was checking up on, one from George Newsome of Kellogg, and I believe the amount was \$60.00, and one from Theodore's Army Store in Wallace, for \$70.00. I am not positive about these amounts, but one was a sixty and one a seventy dollar check, and he said, "There are two suspicious characters over at the Ryan Hotel that have a Ford car license on a Chrysler car." And he said, "One fellow is registered from Medford, Oregon." And he said, "We had some dealings with a matter down at Medford, Oregon, on bad checks, and we think it is the same man." I says, "All right, we will have them drop in and find out what they are doing here." I went over and asked the clerk myself who these people were, and he said, "Why they have been stopping around here for a month." I said, "Are they in the room now?" and he said, "No, they stepped out, they went out." So just as I went to the door he said, "Here they come." And they were coming up the street past the window, and when Cooper came in I asked him what his name was. He told me, "Cooper", and I said, "Is this your partner out there?" And he said, "Yes." And I said, "Come on with me." We walked out on the sidewalk and asked the other man if his name was Rogers, and he said, "Yes", and I said, "You will have to come over to the office with me, I want to investigate you fellows. What are you doing around here?" And as we got up the street

a little ways, Mr. Rogers said he was a treasury official and he pulled back his coat and showed me a star, the same as my star here, only it was a treasury star, and I said, "Have you got your credentials?" He said, "Yes, I have got them." I said, "Well we will go over to the office and look at them", and I took him over to my private office and we talked this thing over, and I looked at his credentials and they were O.K. I said, "You are all right". I said, "Who is this man with you?" He said, "He is my undercover man." I said, "If you boys would come up here and let me know who you were, you would probably not get picked up", but I said, "We are around a lot of times investigating bad characters or bad checks and robberies, and we get reports from Spokane and all over," and I said, "That is the reason you are brought in here." I said, "You are all right, you can go." and I let them go. And this is the only conversation I had with them. I released them.

Q. Do you know anything about—it has been rather intimated rather than testified to that you notified somebody who they were. Did you give any notification of anything about them at all?

A. I certainly did not. That ain't my business to notify anybody about there is Government men around, I would not do that under no consideration.

Q. Did you do it with these fellows?

A. No sir.

With reference to Needham seeing me around Mul-

lan, I have seen him there several times when I would be up there in that town. I have talked to him several times and asked him about something. I never took a drink with him or anybody else. With reference to the soft drink places, that are in Mullan, those places have been there ever since I have been in the county, and while I knew there were soft drink stands and so forth there, I did not know what their business was, and I never had any complaint about them myself, nobody came in and made any kick about them, and I never would see anything wrong when I would go around there, if I ever did go into any of them. Lots of them I never went into. If I went in there to make a raid or anything and I had a search warrant I would make the raid and attend to my business. I knew nothing about this license matter. I never saw any liquor sold in any of those places when I was there. I never suspected anything. If I had seen any booze around there I certainly would have picked them up. When we went into these places we never neglected or refused or failed to answer a call that was given with reference to any place in the county of violation of any law, the liquor law or otherwise. I did raid Pikkerranien several times. At one time we had complaints about him, and another time I raided, it was at the White Front when he was there. Pikkerainen threw a bottle of some kind of liquor against the hot stove, and the room all caught fire from the alcohol. I didn't arrest him at that time, because I didn't have any evidence to arrest him on. You couldn't get anywhere in court on that

kind of evidence in our county. We raided him several times. One time Hahn took the responsibility and paid the fine. Another time we raided a still on the Mullan hill side, in the residence part of the town. Since I was sheriff I have gotten 138 stills. They generally run 20 gallons and some 50 and 100 gallon stills.

Q. Now, when the Federal officers made requests of you, Mr. Weniger, to go with them, would you go?

Yes. This was in 1923 and 1924. I would go if we could spare the men. Johnson asked me a couple of times to go, but at that time we didn't have a man to send. He wanted me to send a man to Clarkia; it is in the lower part of the county, forty miles from St. Mary's. I didn't have any extra men at the time.

One of my men was out of the office on other business, and one was sick, and I could not send anybody. I told him I couldn't spare any officers. I think Johnson asked me a couple of times, but I told him I could not release any of my men when he spoke to me about it. We were pressed for men, lots of work, and I couldn't release anybody. I never gave anybody protection or failed to prosecute vigorously when I knew there were prosecutions, and we could get the proof.

I know some of the defendants in this case. I did not know anything about the licensing system in Mullan. In reference to municipal corporations, and allowing them to look after their police officers, I never interfered with them in any way. I had all I could do

myself. If they called on me I would always go if I could. After the indictment came up I did give an interview in the "Times" of Wallace and that is the only interview I ever gave. That may have been copied in other papers. I have a copy of that interview. With reference to the incident that Mr. Steel testified to, at St. Maries, I was up there and it happened in about this way: Mr. Chapman, my deputy, and myself, were at St. Marys. Steele was there and I think two or three other people, standing there, and we were cutting up and joshing each other. Steele said, "Liquor is coming out of your county into my county", and I said, "We are getting just as much booze from your county." We were joking about the whole thing. There wasn't anything said about my firing anybody. I never made that statement in my life. I never gave any instructions to any of my officers not to interfere with the enforcement of the National Prohibition Law, or the State Liquor Laws. I have fired two deputies, during the time I have been sheriff, one named Harry Jewell and one by the name of Merrick. They were both fired for neglect of duty. It had nothing to do with the enforcement of the laws, or anything of that kind.

To go to Clarkia from Wallace you drive by car from Wallace to St. Marys, and then from St. Marys to Clarkia, about 110 miles. You could go by train part way; going by train is about the same distance. It is a bad road, part of the way.

In 1925 I arrested Anna Tornberg and she was fined and entered a plea of guilty in the District Court. I never made any arrangement with any of the defendants or anybody else as to leaving them alone to sell booze or to allow them to violate a law of any kind, character or description.

CROSS EXAMINATION

BY MR. LANGROISE:

I had just one county car. Once in a while a deputy would be up there with his car when the other would be out on the road and we would use his car. Bloom did not use his car for county work. Chapman used his car in coming from Kellogg to Wallace. The county paid mileage for the use of the other cars; that was once in a while if we had to make a special trip some place. I have used my car if the county car was in the repair shop. I got a certain amount for mileage. My deputy at Avery had no car. At present my deputies are McGinty, at Avery; Jack Keegan at Kellogg; Mr. Chapman and Chief Deputy Kenneth Hoggins. My chief is Kenneth Hoggins and he lives at the Ryan Hotel; he has been living there ever since working in the Sheriff's office. There is John Glayhee, Wallace deputy, who also works in the office, and Charles Bloom. He is called the Mullan deputy. I had a deputy at Kellogg and Burke but not one at Mullan. Bloom lives at Mullan. His home is there but he works at Wallace and out of Wallace. I never

had any regular deputy at Mullan. They did not have one at Mullan. They never had one there before I took office. My force have been between five and six, and seven, including myself. I am not familiar with the forces of the offices of county sheriffs and do not know how many the others have. I never made inquiry about it. The population of Shoshone County is mostly in the cities. Most of the population is in Kellogg, Wallace, Mullan and Burke. They are all within a few miles of each other. Kellogg is twelve miles from Mullan, and Burke is seven miles from Wallace; Wallace is seven miles from Mullan. The roads have been good the last year and a half; pretty rough in the summer time. From Coeur d'Alene to Mullan you would go through Kellogg and Wallace first. During the years 1924 to 1928, inclusive, I have been in Mullan numerous times; two or three times a month. I was in Kellogg a lot more; I go up to Burke two or three times a month to check matters up. Most of my work is to outside points. I have to go to levy on personal property. Bloom and I usually go together. We usually take two to make civil service or any kind of service or arrest. I levy attachments and sell mining claims; there is a lot of work connected with that in our office, and you have got to make out a lot of notices with three or four sheets of paper with nothing but descriptions of mining claims. It might be a group of ten claims, or fifteen claims, or sometimes as high as a hundred. The lawyers do not figure out the descriptions. We have to make out the notices.

They seldom make out the notices. We have to figure it out, and we have to see generally that they get our right from what they bring to us. The same description they give us is used and we do not change it any but we make out the notices from what they give us. We make the notices on the typewriter from the papers they give us. The checking we do is the checking of the copy we make against the one they give us.

In 1924 to 1929, inclusive, we made eleven hundred arrests. Some were away out and some near, some in Mullan, in Wallace, Kellogg and Burke. We were not restricted to any particular town, and they were not restricted to any particular violations of the law, about the same each year. The average work was about the same. They covered all kinds of violations. The arrests ran about the same. If a man was arrested in Mullan or sent down to jail it would be on our books and we would not have made that arrest. I sometimes would get him and bring him down. That would go on the docket. I am not sure whether these are included in the eleven hundred. Constables and county peace officers other than our office made arrests throughout these years a good many times in some of the towns. Not very many of these were turned over to the county clerk, probably two or three a month. These arrests may be on the warrant books and if so they are included. In 1925 I believe we made twenty five or twenty six arrests for violation of the prohibition laws. I cannot tell you how many arrests were made in 1926 by my office for violation of the liquor laws. I would

have to look at the record. I do not think I looked at the records for 1926. I could if I had my warrant book here. I see from a copy of the warrant book the arrest of Jack Tullis, \$500.00, January 11, 1926. Liquor arrest. The next one is a liquor arrest of one Schuchman, February 2nd, 1926, paid \$100.00. And the next one is Henry McGill, March 3rd, 1926, liquor arrest, \$250.00, 30 days in jail. Mr. Chapman arrested him. Next, March 24th, Panthy Anderson, possession of liquor, six months and \$150.00. Arrested by Weniger. The next is June 3rd, Y. M. Legal, Weniger, possession of liquor, fined \$50.00. The next is September 13th, Frank G. Turner, arrested by Bloom, manufacturing liquor, \$100.00 fine. The next is William McNaughton, arrested in November by Chapman, liquor possession. The fine is not stated or the year. I think that was overlooked. Here is one on the 16th of November, Telford Travelor, arrested by Bloom, liquor possession. The fine is not shown. December 30th, Mrs Billy Wilson, liquor possession, Weniger. That is the last one. Those were during the year 1926. I can't tell which court they went into. In 1926 we made 216 criminal arrests for violation of different laws and I did not include the Wallace constables. In 1927 we arrested for violation of the liquor laws Jessie Swan, March 11th, by Chapman, fine, \$100.00. Mr. Earl Mewes, May 14th, 1927, by Bloom. The fine is not stated, the amount of it. July 21st, William Crazular, liquor, Chapman, \$150.00. October 15th, Tony Paraka, Weniger, liquor posses-

sion, \$100.00. On the 23rd of October, Matusala, by Chapman, liquor possession, \$100.00. That is all. During the year 1927 we made five arrests for violation of the prohibition laws by my office. During the year 1927 we made five arrests and 129 arrests for violation of criminal laws in Shoshone County. I do not know how many were made at Mullan. I think Bloom made the arrest because he was up there. He goes other places too. My other deputies would go to Mullan at other times. I thought Bloom made it because I figured it was up in that section of the country. I do not see in 1928 a single arrest made for violation of the prohibition law. I cannot tell without checking up for 1925 or 1926 on the cases for Mullan.

Q. During the years 1925, 1926, 1927 and 1928, did you or any of your deputies arrest any of the defendants in this case for violation of the prohibition laws?

MR. NUZUM: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

A. I can't say positively whether I did or not.

I cannot check it over from these papers here and tell you whether we made any arrests in Mullan. I can from the records in Wallace. During the year 1929 myself and my deputies made no arrests in Shoshone County for violation of the liquor laws prior to August. In August the federals made a number of raids and after that we made several arrests for

prohibition cases. One was made before and two later. On August 13th we arrested a man at Kellogg for liquor nuisance and on August 29th we arrested a man at Mullan for conducting a nuisance, \$750.00 fine. On the same date we arrested Henry Bennett, liquor transportation; he was released and not fined. J. B. Schmitz, October 9th, liquor possession, fine \$250.00; Fred Ruyer, October 29, \$50.00 fine. There were four made after August 1st, 1929. There were 112 criminal arrests during the year 1929 made by my office, so far. During the years 1925 to 1929, inclusive, I knew the federals were making arrests in the county for violation of the prohibition laws. They brought the prisoners to my jail. I believe they may have made 150 cases in Shoshone County. I remember of being in the Bolo in Mullan once. I think I was in there two or three minutes. I talked to Mr. Morphy about the night police. He was standing at the cigar counter there in front. I do not recall seeing anyone else there. I saw one or two when I walked in there but did not pay any attention to them. I have never been in the Mullan Pool Hall or the Hunter Hotel; have been in the Fern Apartments once. I do not recall who the woman was. I was up there with a government man working on the express robbery in Spokane where the man got shot. We were checking those places all night. That is about the only time I ever was in that place. I do not know where the Marble Front is. I was in the Yellowstone Cigar Store once. Some man got beat up there and went to Portland

and died and I was investigating it for the Portland authorities to see what the crime was. We were checking up for the prosecuting attorney's office in Wallace but it came through Portland because the man died down there. There was a rooming house upstairs and a lady operating it. I do not recall going down stairs. The business district of Mullan is about two and a half blocks long and about a block and a half wide. The business district in my judgement is that large. There is one little block in the middle that is fairly well built up and the other block, about half way, built up and toward the police station the other half. Most of the business is in one block. I never was in the Coffee Shop; do not know where it is. I have walked passed Mike Kennedy's popcorn stand but was never in there; do not know where the Miners Club is; I know Mr. Fond; have known him about a year and a half. I have been in his hotel three or four times. You do not have to go into the barroom to go into the hotel. There is a lobby and then the pool hall and there is a bar in there, and I have been in there. I never detected the odor of whiskey in there, or in any of these places; never raided these places except when I had occasion to and had a warrant. I don't think I raided them during 1927 or 1928 or the early part of 1929, unless the records show that I did. I did not know who was conducting these places. I know that Pikkerainen was around Mullan. I did not know he was running a place. I know that he had been convicted for bootlegging in the federal court.

I knew Joe Speck. He was in my jail for a while. I did not know that he was in Mullan in one of those places. I knew Blackie Coughlin in a general way; did not investigate to find out what he was doing and did not know. I did not know Walter Johnson or the Mullan Road House. Those places changed hands a whole lot. Every time they would raid one of them there would be somebody else in there. I do not know who they were. The federals would raid them and bring these people down there. I never had occasion to investigate those places after the federals raided them. No complaint was made about them. I was the sworn sheriff of Shoshone County and took an oath of office, in which I promised to support the constitution of the United States and of the State of Idaho and do all those things required of my office, and I am doing them. I understood that the duties included the detection of violations of the law within the county and I am following them. I was the enforcement officer in Shoshone County. It includes every law as well as the prohibition laws. That is what we have been following. The reason I did not make investigations as to places that were violating the law, the federal authorities were making continuous raids and I thought they had the thing in hand. I would have looked into the matter and assisted them if anybody had made a complaint to me, or if I had gone in there myself and found a violation of the law, I would then arrest them. If a murder was committed I would look into it right away. If forgery was committed

they would have to come in before I would know about it; bad checks the same way; assault and battery, if I saw it, I would make the arrest. If not, if somebody would come and tell me about it, and get the warrant; the same way with liquor. If somebody was buying booze in a place they would have to make a complaint, bring the complaint in before I would know about it. I did not keep track of suspicious characters in the county. That is the police's duty. If I saw a suspicious character on the street or on the county road I certainly would investigate them. I would not say I checked them very carefully. If there was any crime committed, anywhere, and I was looking for somebody that had committed it, I would check up. Cooper and Rogers did not look suspicious to me at all. McGill was not working around there that I knew of and they said he was making this statement about making beer for the Elks and when I heard of that statement I investigated immediately. I never heard of any statement made by McGill before. It was during the Elks Round Up in 1929. I heard that McGill was around there. I did not know much about him. He had worked in the mines there and I checked up a little bit: found he was kind of a bootlegger and no good. I heard he worked in the Midnight Mine for only a few months. I knew Charlie Fond was arrested and convicted. I did not know about McGill being down in the case or that he was a witness in the case. I had McGill brought into the office when the complaint came into the office about talking

about making beer for the Elks. I do not know what statement he made to the Federal officers. I did not know he was connected with the Federal officers. When any statements were made to me about liquor violations I investigated them. I cannot recall whether any were made to me in 1928, and if any were made, then I investigated them. We were constantly looking about to see if we could find anybody for liquor violations in 1928, but we never ran across anybody in 1928. We may have made a few raids in that year, but I cannot say until I look at the record. I remember the Barron incident in 1928. Johnson and Webb came into the jail office. I do not recall saying, "I got your blankety blank stool pigeon in here." I don't recall saying, "What is he, a Federal man or a stool pigeon." I did not make the statement to Johnson and Webb that he was a stool pigeon. I did not have any information until after Barron told me. I do not remember of his having any book with the names of people that he had purchased from. All I remember was that he had a ticket for baggage he had shipped from Missoula. What I said to Johnson and Webb was that Barron had told me he had been down to Coeur d'Alene and turned in these people up here, and I said, "Are you a Federal officer", and he said, "I am doing some work for them." So when Johnson and Webb came in I asked them if he was employed by the Federal Department. I had the information just a few moments before they came in that he was working. I did not say to Johnson and Webb

in a way that I could take care of my own county without the help of them. That conversation was as follows: Mr. Webb was bawling out Needham about something, and I said, "Why don't you leave this fellow alone and take care of your own business", or something to that effect. I was not interested in Needham. I did not care to have Mr. Webb come down and make a general talk about officers in that county. We were looking after our work as well as we could. I do not remember Webb coming to my office in 1924 or asking me anything.

Q. Did you not at that time tell him (Webb) in substance and effect that you had been elected by the wet element of that county and that you did not choose to do any work along the enforcement line, and for that reason you could not take any part in his work or give him any assistance?

A. I did not.

Q. You did not make that statement?

A. No, sir. I did not.

Johnson talked to me a couple of times on enforcement of prohibition laws.

Q. Didn't he at that time tell you that he was going to be stationed there at Wallace for a time and ask you if there would not be any chance to get a little help if a fellow needed it, and if you did not say to him, tell him that you had all you could handle without doing anything with the prohibition, and that your men, referring to your deputies, were under bonds

and that if they would go out with his fellows, referring to Johnson and other Federal officers, "We might shoot somebody," and you would get in trouble over it.

A. I don't recall that statement, no.

I remember Johnson came to me once and wanted me to send a man out with him over to Clarkia—

THE COURT: That has been covered.

A. Yes sir, that is the only time.

MR. LANGROISE: Then you don't recall anything along this line or substantially like this?

A. I do not.

Q. You say that you did not tell Mr. Steel, the Chief of Police at St. Maries in the presence of your deputy, Mr. Chapman, that if you ever caught one of your deputies arresting anyone for violation of the prohibition law or liquor laws you would fire him?

A. I never said that, no.

I recall I was in St. Maries talking with Mr. Steele. We were joshing about liquor, and Steele said that the bootleggers were bringing stuff out of our country from the Clarkia country down there. I said, "There is enough liquor coming from St. Maries and Benewah County as there could be the other way", and that is about all there was to it. We were just kidding each other.

When the Federal raids were on I did say something to Johnson about Glen Stowe, Sheriff of Kootenai

County. I asked him if the deputy sheriff of Kootenai County was coming to our county to help police it. I was not objecting. I just wanted to know if they had a right to come over and that is all I wanted to know. I did not tell Johnson if McDonald wanted to police our county I would turn it over to him. I am not certain but I do not think I said that in either substance or effect. During these years our office was very busy and we had lots of work, I have helped Simmons in 1929 and have done that before in investigations. He is a detective for the National Detective Agency of Spokane, I do not think it is governmental or state or national. He works in our county once in a while. He has been here in attendance during this term of court. He may have been in contact with my lawyers. I suppose he has been, yes. I only did about fifteen minutes work for Simmonds. He told me that he thought Rogers and Cooper were a couple of bad actors and were wanted down in Oregon some place. I did not think bad check men were worse than liquor violators. They all look alike to me. I went down and got Rogers and Cooper. Simmonds, I think, had gone to Mullan. He had some other stuff he was checking. I did not know who they were when I went down there. I did not know who they were. I did not know a thing about what they were doing. I did not hear anything about them only the conversation I had with them. My deputy who stays at the Ryan Hotel did not tell me they were staying at the Ryan Hotel. I did not know anything about there being connected with the government

until I picked them up myself, and I had not had any information that led me to suspicion them. I did not know anything about them. If I had I would not have took them up at all. When we started out Rogers showed me his government badge. I took him over to the court house and made him show me his card. He showed me his Government transportation request at the office. I did not ask him what he had been doing there. I was not interested very much. I did not know what he was doing there but I wanted to find out. I wanted to find out who was around there. I was over talking to the clerk at the Ryan Hotel and he told me that this fellow had been getting drunk around there and was acting kind of queer and they did not know who he was, and besides that he had this Chrysler car, with a Ford license on it. Simmons told me he had a wire and had got information and showed me. Simmons had not talked with these men, had not filed any complaint against them. I went down there to see who they were, there was a strange license and the license was wrong, and Simmons showed me the telegram that he got. That was enough facts to show me there was somebody in the town that might have a stolen car. I was looking into it. When the government went into a place and picked out men for violation of liquor laws there it showed that there was liquor in the place. I did not know these men went back into the same places after they got out of jail. I was not keeping track of those fellows and running around after them after they got

out of jail. If I had been in Mullan I would probably have looked them up. I was checking the suspicious characters all the time and I paid attention to a man that had been convicted of a violation of the law. I did not go around and watch them after they came out of jail. I did not have any reason to do that. In fact I did not see them around Mullan at all. When McGill was brought to the jail I sent Charles Bloom and Chappie after him, two of my deputies. I sent them over to try and find him and they found him at the Ryan Hotel. I told them to bring him up there because there were people who told me he was talking about the Elks bottling some beer, that he was bottling beer for the Elks and I wanted to find out what he was doing, making that kind of talk about the Elks. I did not care anything about his talk, but I heard he was no good and was laying around this hotel. I sent my men out to find out what he was doing; he was not arrested. I was concerned about his talk and about what he was saying as well as what he was doing. I did not tell him at my office I understood he was doing some stooling for the government, and I did not tell him he had better stay out of the liquor joints. I told him he had better not be around there drunk. I told him to go to work and get a job in the mines and cut out his dirty work around there and talking about the Elks and stuff like that. I thought he must have been drunk before he would say things of that sort. That was very uncommon at Mullan and Kellogg and Wallace. I do not know about it being uncommon for people in that country. There

are some very good people up in that country. I picked up in the neighborhood of 138 stills. I cannot tell you exactly how many men I picked up with the 138 stills. A lot of times nobody is arrested with them at all. Eight times out of ten you won't catch anybody with the stills, and chances are nobody else will. That is true as far as I have checked up. I don't know what the government does and do not know what the government has done up in that county. I have heard about the government taking stills occasionally. Sometimes they get a defendant and sometimes they do not. Approximately about eight times out of ten you do not get the defendants with the stills. As to the estimate of the number I have arrested out of the 138 stills, that was in the first two or three years of my sheriffship up there and I cannot tell without checking over the records. We made quite a few arrests out of those 138 stills. At the time we got these stills the Federal Department was not doing much work in that country and we went out and did it. After they came in the last few years and did all the work we just let them go ahead and do it. They were not very active in 1924; they made a number of arrests. They did not use undercover men at that time. I never heard anything about it. They have used undercover men more in the last few years and therefore they are getting more bootleggers. After the Federals came in I did not quit. I would have arrested anybody that I found violating the law. When we had seven deputies we had a little better line on the thing, and we went after them. When

my men were half sick all the time and only five deputies we could not do as much as we did before. I did not consider the civil business in the county of more importance than enforcement of the criminal laws. I considered both lines. I considered that I should enforce the criminal laws and attend to the civil business, but the civil business comes in such big lines that we practically have no time to attend to the criminal business. I don't know that Shoshone County Sheriff's office is the most expensive in the State of Idaho. I talked to the County Commissioners on several occasions for help to enforce the prohibition laws. I told them we ought to have a couple of more deputies to take care of the work in the county. I did not think it was necessary for me to tell them what I was wanting it for as long as I had enough work to take care of it. I could have paid it out on the Prohibition Law when I needed it. We talked about all kinds of business, civil and criminal laws. I never had any money to hire any undercover men. I never tried to; never asked for them. I did not know there was a contingent fund of a thousand dollars under the control of the Prosecuting Attorney or District Judge of that county that was available for that purpose. Nobody told me anything about it. I have been Sheriff since 1923. I asked the County Commissioners for more money and they cut me down on it. I never requested money for undercover men because I did not think of using undercover men. They never had been used in that county. Why should I use undercover men? I did not know they

were being used all over the state. I don't know anything about undercover men. I have tried to find out about them. I knew that the Federals were using undercover men. I spent something over \$20,000 in 1923 in my office, and better than \$17,000 in 1924; during the year 1925 my office spent better than \$20,000.00; during the year 1926 my office spent better than \$18,000.00; during the year 1927 my office spent better than \$18,700.00 and during the year 1928 better than \$20,000.00. My salary has been \$2000.00 a year, the deputies \$150.00 a month for all except the office man, who gets \$160.00. I have not purchased two Cadillac cars during that time. I certainly did not purchase a Cadillac car in 1928. I have an old second hand Cadillac touring car that I bought in 1925 or 1926, along in there; that is not the only car I have had. I did not get another Cadillac car after that; that is the only Cadillac car I ever had. I had a Gardner and a Hupmobile. That is all, and those are the only cars I ever had. I did not build a new home in that county during the time I have been Sheriff. I made a few improvements. I have had a home in Shoshone County ever since I have been there. This one I am living in is the same home I have always had since I have been in Wallace. The first year I was sheriff I was living in Kellogg; then I bought a house in Wallace, a cheap place up there; I did not make some rather expensive improvements. I did not make any in Kellogg. I have made a few improvements on my Wallace house; it certainly did not run into several thousand dollars. It ran into \$700.00 or \$800.00. That is all the

improvements I have made. I have only had one interview since this investigation started and have given no interviews since then. I do not know Mr. Sheridan. (Mr. Sheridan stands up.) I have seen him around here.

Q. I will ask you if you did not, in the hall, on the afternoon recess of December 18th of 1929, state in substance and effect to Mr. Sheridan, you and he being present there: "The reason that I am in this jam with the Federal authorities is that during my term of office of Sheriff of Shoshone County I have steadfastly refused to cooperate with the Federal Dry Agents?"

A. I did not.

Q. "And would not allow myself and my men to become stool pigeons for the prohibition officers?"

A. I did not.

Q. "For the last years, Shoshone County has been overrun with undercover agents of the Dry Forces until it is now impossible for a stranger to enter the boundaries of the county without being placed under suspicion?"

A. I never made any statement to him at all.

Q. Did you make that statement in substance and effect, or any part of it, to him?

A. I did not make any part of it.

Q. And I will ask you if you did not during that same time, and during that same conversation with Mr. Sheridan, you and he being present out here in the hall on the same day, state to him: "During this period

that I have served as Sheriff of Shoshone County I have minded my own business pursuing and catching law breakers and when complaints against bootleggers and liquor handlers were registered in my office, arrests were made, but I did not send any men snooping into personal affairs of the citizens of the community."

A. I certainly did not say anything of the kind.

I have no prejudice against any regular undercover men. I did not make any of those statements in substance or effect to Mr. Sheridan. I did not make any statement to him at all. We talked about my picture. He wanted to get my picture. That is all we talked about.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

Q. Mr. Weniger, they have asked you something about your finances. How many Federal agents have come and Government Agents, and searched over your books and gone into your affairs within the last four or five months?

MR. LANGROISE: I object to that, if your Honor please, for the reason he can show his finances, but whether any one inspected them is immaterial.

THE COURT: Objection sustained.

MR. NUZUM. Exception.

Q. This Cadillac car, did you trade it in on the Gardner?

A. I traded it in on the Hupmobile. With reference to the Gardner car, I had the Gardner agency during the year I was in the insurance business, before I became Sheriff; and then traded the Cadillac in for the Hupmobile. I was in Seattle when I made this trade. My house improvements were as follows: I had the house painted and had a little concrete work done there, about seven or eight hundred dollars worth of concrete, and the painting cost me about ninety dollars, and I did most of the work about the place myself, filling in and so on. It did not cost me in excess of \$1,000.00, everything I did on it. The assessed valuation of the property is \$1350.00.

On the 1923 items of the Sheriff's office, for the \$20,000.00, I think about \$15,000.00 was for salaries and then there was an automobile purchased that cost \$1800.00, in 1923 or 1924, and the feed of the prisoners, board of the prisoners; it takes some two or three thousand dollars; expenses of operating the county car, gasoline and tires and repair bills covering most of that stuff; and the expenses of the deputies traveling around and making arrests. The reason of the drop to \$17,000.00 in 1924 was because I only had five deputies; all of these bills, salaries and everything else are approved and fixed by the County Commissioners. The State of Idaho also had a state enforcement officer stationed in Idaho during this period of time, in Shoshone County; it was Jack Foster. He was a representative of the State of Idaho; was up there as an enforcement officer for five or six years. I think he got off of the force in

November, 1928. He assisted the Federals once in a while in making arrests. He did not make any independently. Shoshone County is the only county in the state that is a judicial district in itself.

CHARLES BLOOM, called as a witness on behalf of defendants, testified:

DIRECT EXAMINATION

BY MR. NUZUM:

My name is Charles Bloom; my residence is Mullan, Idaho; I am one of the defendants in this case. I will be fifty nine years old in February next. My family consists of a wife and three children, live in Mullan. Since coming to the Coeur d'Alenes in 1899 I have worked in the mines and worked there for about ten years. Then I went into the saloon business in 1910 in Mullan; Then I was in the saloon business in Wallace for two years. Then went back to Mullan in the saloon business until the time the State of Idaho went dry, in 1916. I then opened up a little lunch counter or restaurant and worked in that for about a year; then I went on the police force in Mullan in 1917. Was six years on the police force and then went to work in the Sheriff's office with Mr. Weniger when he was elected in 1922. Have been there ever since. For the first two years I was what they call a field deputy, traveling around all parts of the county; from that time on I have been a deputy

sheriff and jailer. I have stayed in the Wallace jail with the exception of visits at home in Mullan with my family. I would run home in the evening and stay home an hour or two; probably once a week I would stay home all night. This last year before and after I was sick they let me go home every Sunday and Dennis Groggin would take care of the jail over Sunday during the time before and after my operation. I began to go to the doctor in the fall of 1927; that sickness resulted in a cancerous growth on my lower bowel, and I was doctored on for over a year before I was operated on the first time. The first operation was about the 10th of February, 1929; the second operation about the first of April. After I got under the doctor's care I was advised by him, by Dr. Smith, not to drink because that would kill me, or words to that effect; it would make my sickness worse. I did not take a drink of liquor during 1927 or 1928. I heard the testimony of McGill that I drank in his place frequently from August, 1928 until he left there in December, 1928. That is false. I heard the testimony of Needham that he had seen me drinking and smelled liquor on my breath after he became Chief of Police, after May, 1927. That is false. The condition of my stomach and breath was such that I had to take deodorants because of the smell of my breath caused by my illness. Dr. Smith gave me medicine. I heard the testimony of McGill with reference to his giving me thirty dollars in money, which he said took place sometime after the election in 1928. That is false; he never gave me a quarter of a

dollar while I was deputy or since I have been a deputy sheriff. I never had any conversation with McGill about money; he never gave me a nickle or a cent. I never gave McGill any notification of impending raids by the Federals; I was not in Mullan on the day after Christmas in 1928. I was in the Mullan Inn only twice when McGill was there. The first occasion was bringing in the tax notice, the personal property tax. Mr. Evans, the clerk in the treasurer's office at the court house in Shoshone County, sent it in. It was addressed to McGill at the Mullan Inn; I left it with McGill. I had met him on election day and this was afterwards, in December, about the middle of the month. On another occasion I brought in a letter to Jack Malloy. The office deputy handed me this letter. It was addressed in care of the sheriff's office at Wallace for Jack Malloy, and he asked me if I knew Jack Malloy, and I told him I did, that he worked up at the Sheridan lease, that is the Midnight Mine, a couple of miles north of Mullan, so I took this letter up to Mullan and went into Le-Gore's Store and asked a fellow called Shorty there, "Do you know where Jack Malloy is to be found? Is he still at the Midnight?" "No", he says, "you will find him at the Mullan Inn." I took the letter in there and Malloy was there, and I gave it to him. That is the only two times I was ever in the Mullan Inn during the time McGill was interested in it. McGill's testimony about seeing me drink with Charley Fond is false. His testimony with reference to his buying in

there, in which he said I told him it would be all right, and maybe he could make a go of it, is false. I never had any such conversation with McGill. I never advised him not to go after Fond because Fond did not have any money or he was no good or he could not collect. With reference to the election incident, about which McGill testified, I was the Democratic committee man of my precinct in Mullan, and had some Democratic miners election day in my car, and Mr. McGill came to me and told me that he would like to get one of those miners, that he had a Buick sedan and he was going to run this sedan up to the Midnight and back, taking voters down because he worked or used to work there and knew everybody there. I said, "I have already hired four cars". I hired the cars, being the committee man, "and that is all I can stand for. We have not got money in the treasury to hire any more cars." Well, he said, "I am going to run that car anyway; give me a banner." That is the first time I ever remember meeting McGill. I inquired what his name was and he told me. I heard his testimony where he said I said something to him about saying a good word for Weniger. Weniger's name was never mentioned. I heard his testimony where he said he saw me after election and I said, "We did pretty well; we got Weniger elected and everything will be allright", or words in substance to that effect. No such conversation occurred. I have had occasion to go around in the county into the various poolrooms and social places and soft drink places on business; I collect the pool table license the first month

of each quarter for the county and state. I collected the pool table license at LeGore's Store, two tables; Bilberg Hotel with three tables, sometimes only two; they would take one off but mostly three. Then I forget what they call that place now, whether it is the Montana Club or Miners Club,—Miners Club, one table. And Victor Hotel, three tables, and at one time the Mullan Pool Hall with one table. I think that was in 1927. And the Yellowstone Cigar Store, one table. Those were the only places in Mullan that I collected for the pool table licenses. As to the other places that have been mentioned in this testimony, I had no license collections to make there. I do not know a thing about the licensing of soft drink parlors by the City of Mullan or the amount they paid, until this last summer when the investigation started it. I heard people talk about it at that time. I did not know about their soliciting money from some of the places, houses of prostitution, gambling and things of that kind. Nobody ever solicited me. I only went into any of these places when I was looking for somebody, wanting somebody or having cases to serve on somebody, or something like that, inquiring for such parties and collecting the licenses mentioned. I did not for any other purpose or any other occasion. I was in the hospital February, March and April, two months at home after that. With the exception of June, I came out to Wallace about once a week, visited the sheriff's office and took the stage back again. I could not drive. I started to work serving papers in July; that was the first work I had. I was

sick and confined to my home in Mullan for a month in the latter part of the summer. From that time on until December 1928 I was able to get around actively, except I was sick for a week over Christmas and did not leave the house until after I went to work. I had to be very careful with myself in the summer of 1928 until I had the operation. In the years 1926, 1927 and 1928 I remember going into the places in Mullan where I collected the pool table licenses. I went into the Bolo looking for parties, one time to serve a garnishment. I went to the Bilberg Hotel several times to find a certain fellow I wanted to serve with some papers; I went to LeGore's. I got most of my information from LeGore's. They knew where people were working, the miners, trading there to a certain extent, and at the Mullan Inn, before McGill was there, a fellow named John Rantella used to give me information about Finns, where they lived, when I wanted to serve papers on them. I was in there, but could not state how many times, looking for information as to where Finns lived. That is why I went there, to locate various Finns. I never went to the Yellowstone Cigar Store except when I collected pool table licenses, that I remember of. When I was in these places during these periods I did not see any liquor; did not see any being drunk or sold; did not see any liquor bought or taken out. I was there when Pikkerainen's place was searched, in the Marble Club. We only searched that place once that I remember of at that time. Pikkerainen was not running the place at that time but he was there. We found liquor

in the back room and a fellow staying in bed sick. We found the liquor all around him in the bed and under the bed—a fellow by the name of Hans Sole, and we arrested him and brought him down and he paid a fine. I forget how much it was, in the district court. Pikkerrainen was in there at that time, but he was not arrested because Sole said he had nothing to do with it; only happened to be there. That is what he told us. I was not with Weniger in the other raids that he made on him. The office deputies in the office at Wallace were busy and always working, I have been busy all of the time doing something and when I have not been with Mr. Weniger I have been out by myself. I travel with him in his car. Nobody has ever sold or handled liquor in my presence that was not apprehended. We got more bootleggers in the first three or four years. We were not so well known then as we are now. We had less difficulty in making arrests. We got a good many stills. We got some of the men who operated them. I could not tell how many. We raided places and got whiskey in. There are two places in Shoshone County that it is quite a lot of trouble to get into, Clarkia and Avery. You have to go by way of St. Maries to go to Clarkia. I think it is about forty miles from St. Maries to Clarkia, and better than one hundred miles all the way from Wallace to Clarkia. You have to go by way of St. Maries whether you go by train or car. It takes you longer going by train than by car. You have to go to Harrison and take the boat up to St. Marys, and then get on the train again at St. Marys and go over a

branch road, I think it is the Milwaukee branch, into Avery, and then you can go through Montana, part of Montana, taking the train at Wallace. This last year they are building a road from Borax, I think, is the name of the place in Montana, and then you go down over the summit and down the river into Avery. It is a narrow, dangerous road. The Coeur d'Alene River provides the valley, the only big valley in Shoshone County and all the balance of it is gulches that run up into the hills, and they lead into the main river. Numerous mining companies are operating mines up in the gulches.

I was in the office when Rogers and Cooper were brought in there by Weniger. I remember one of the forged checks that was shown them. I handed the check to Weniger when Rogers and Cooper were there and they were talking about it.

With reference to the Barron incident, I witnessed that. I had just come out of the court house. I was standing there ten feet from Mr. Weniger and Mr. Cartwright, to whom he was talking (the same Cartwright who was on the witness stand and testified). I heard a noise across the street and heard the words "Son of a bitch." It sounded like a woman's voice, and I looked over at that time and saw Mr. Barron haul off and hit this woman in the face—the side of the face, it looked to me. She fell off the sidewalk. Weniger started across the street ahead of me, and I followed. He picked up the woman and raised her up. Her face

was bruised, one side of her face was red. Mr. Weniger asked this fellow what he was doing, some words to that effect, and he said, "She called me a son of a bitch", and Weniger said, "You are under arrest—you had better come with me." We took him in, and the woman also, and after they got into the guard house he asked the woman what she wanted to do—whether she wanted to get a warrant for his arrest. She said, "Yes, certainly." The Sheriff said, "You go ahead and get the warrant." She went over to Judge Leahy, I think, Justice of the Peace, and brought back a warrant, and Weniger looked it over and said, "That isn't right, that isn't the right kind of a charge, you had better go and get another warrant." There was another warrant. I took Barron up to the court and he was arraigned and plead; there was a lawyer with him. He consulted with his lawyer; Fitzgerald it was; he was there and asked the court if he could take him out for consultation and the Judge said, "Yes." They went out and he came back and plead guilty. I did not know anything about his going to the prosecuting attorney's office. I saw him every day in jail and I did not see any bruises or black eyes or anything wrong with him. He never made any complaint to me. I was the jailer and around there every day. As deputy sheriff it became necessary for me to ascertain the addresses of people at times and to go into these various hotels in Mullan. The hotels there were the Central Hotel, Bilberg Hotel, Victor Hotel and Stevens Hotel. I never saw liquor sold in any of these various places in Mullan. In 1916 I was conduct-

ing a little restaurant in the City of Mullan. That was fourteen years ago. I was arrested for liquor violation and fined fifty dollars and served twenty-five days in jail. Major Woods was the judge in the District Court, who sentenced me.

CROSS EXAMINATION

BY MR. LANGROISE:

I have lived in Mullan since April, 1899 but not continuously. Was away from there in 1902, 1903 and 1904; the rest of the time I have lived continuously in Mullan. I was a police officer there; went on the police force the first of May, 1917. My arrest for liquor violations was a year and two months before that, something like that. I remained on the police force until I went to the Sheriff's office, about six years ago, or close to that. I cannot remember how long I have know Waino Pikkerainen; probably four years, the last four years. He worked in the mines when I first knew him. Since that time he has been working for Frank Hahn, who was running a soft drink parlor. I was in Hahn's establishment but Hahn was not there. There was a fellow there before him by the name of Sole. I do not remember ever being in the Rockford. I have passed there. I knew what kind of a place it was. I know where it is located. I don't remember ever being in there. I knew what kind of a place it was. I could not see from the outside what it was like on the inside.

I have been in the Mullan Pool Hall in 1927, when they had a pool table there. I was probably in there three or four times, in my recollection. Charley Hartley was running the place part of the time. Joe Speck was working there. There was in the Mullan Pool Hall at that time a show case on the left hand side of the door as you go in and next to the show case a partition, swinging doors, and inside of that partition was a pool table at that time, on the center of the floor, the center of the room, and I think it was a back bar, but that you could not see unless you went into it, and I never went into the backroom; I cannot say what kind of a room that was. I did not go into the backroom because on the occasions when I was there I was collecting for pool table tax and I generally did that at the show case, and did not have occasion to go into the back bar. I am not sure, but I think it was a party sleeping in that back room. They had a bar there in the middle of the room. There was an old time saloon back bar and an old time front bar. They carried cigarettes and cigars and soft drinks on the shelves. With reference to the cigars, the showcase was just like any other show case, filled up with boxes of cigars. I could not say that the showcase was so very large. I could see from the bottom of the show case cigar boxes piled up in tiers, in rows, in under the upper part of it, and they carried cigarettes and soda pop and ginger ale and stuff like that. I could not state how large an assortment it was except what I could see by looking over it. I know of no one else but Joe Speck working there. There was a card table in there in one

corner of the big room. They were not playing cards in there that I remember of any time I was there. I had no information gambling was going on there. I had no information that they had any booze there at that time. I raided that place before that. When I was on the police force in 1917 or 1918 or 1919, along in there. I did not raid it when I was in the Sheriff's office. A man by the name of Gus Brass was there when we raided it. I never smelled any whiskey in there. I saw a man at the bar when I was there but I did not see him drink or anything. I did not see them have a few small whiskey glasses in front of them. I never saw any small whiskey glasses on the bar. I did not see any drunks around there. I was in the Marble Front on one occasion raiding the place and arrested a party. I think that was in 1924 or 1925. I picked up a fellow named Hans Sole. I do not know whether he returned to that place after his arrest. I do not remember Sole going back to the Miners Pool Hall. He was not taken out of there that I know of. I knew Pikkerainen in 1924 and 1925; knew he was picked up by the Federals. I think he returned after he was picked up by them. I do not know where he went. I did not see him around any of the places after that. I did not go to them frequently. I collected for the pool tables on the first of the month for each quarter, four times a year. I would only go there on other times serving papers or looking up somebody. I do not remember seeing Pikkerainen there in any of these places after that. I know he was picked up again by the federals in the Marble Front

after he served that sentence. He came back to Mullan after that but I do not know what place he went into. I cannot say as to whether he was in the Marble Club in 1928. I do not remember being in the Marble Club in 1928 so I do not know what merchandise they had there. I do not remember being there in 1927 or 1926. I know the Bilberg Bar. Have been in there several times. I was not in there several times a month. I might have been there once or twice a month at times. I know Charley Fond. I know him not any too well. We have not been bad friends. I have not visited with him a good deal. I went into his place of business and that is the only time I ever went in there. I saw card tables in there. There were three pool tables in the middle room of the Bilberg. I saw them playing cards in there but I don't know what game they were playing.

Q. What were they playing?

A. Well, I don't know that.

MR. NUZUM: Wait a minute, Bloom. I object as incompetent, irrelevant and immaterial as to any card-playing in the Bilberg.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

I did not stop long enough to find out what game they were playing.

Q. You did not want to know, did you?

MR. NUZUM: Just a moment, I object, you Hon-

or please, as improper cross examination.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

A. Well, I don't say that I did not want to know. I did not really think about what they were playing or not.

MR. LANGROISE: Q. Weren't you interested as an officer of the law?

MR. NUZUM: I object as immaterial and incompetent.

THE COURT: Overruled.

A. Interested, yes, I suppose I was interested.

MR. LANGROISE: Q. You had taken an oath to enforce the laws of this county, had you not?

A. Yes sir.

Q. And there is a law against gambling, isn't there?

MR. NUZUM: I object as incompetent and immaterial, anything about gambling.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

A. Well, I don't know whether it was gambling or not.

MR. LANGROISE: Q. You did not try to find out either, did you, Mr. Bloom?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: The objection is overruled.

A. I saw the cards and the chips on the tables and they were playing.

MR. LANGROISE: Q. And you did not try to find out, did you, what they were playing?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. I don't know that I did.

MR. LANGROISE: Q. You had never heard any reports that they were gambling at the Bilberg, did you?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I heard they were playing cards there.

MR. LANGROISE: Q. Did you have any information or any reports come to you that they were gambling?

A. No.

Q. Never during all the time that you lived in Mul-lan?

A. No complaint, no.

Q. And you never heard any rumor that they were gambling at the Bilberg?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I heard they were playing cards, that is all. I don't know whether it was gambling or not. By playing cards I mean people sit down around the table and play a game of cards of any kind.

Q. What did you hear about it?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I did not hear anything about it, at any time.

They had a bar and a back bar in the Bilberg. I did not see them drinking whiskey; did not smell the odor of whiskey; did not see any whiskey glasses; never saw any whiskey glasses along the bar; I did see some of them, people standing at the bar. They did not have any whiskey glasses in front of them or in their hands, never at any time I have been in there. I know Charles Anderson. I don't remember that I have seen him behind the bar. I have seen Herbert Anderson behind the bar.

Q. And you knew of the Government picking Herbert Anderson up at the Bilberg in 1927, didn't you?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

A. I know that the Federals brought him down to our jail. I think it was for liquor in possession. I do not know of the Federals taking Herbert Anderson out of the Bilberg in 1928. I can only remember one time right now. That might be so.

Q. Did you ever make any investigation at the Bilberg after you knew of them taking Herbert Anderson out of there on a liquor violation?

MR. NUZUM: Just a monent. I object as incompetent, irrelevant and immaterial, and assuming a state of facts not in evidence.

THE COURT. Overruled.

MR. NUZUM: Exception.

A. No, I did not.

MR. LANGROISE: Q. Why didn't you?

MR. NUZUM: I object as immaterial.

THE COURT: Objection is overruled.

A. Well, I don't know why I did not. I was working from orders from the Sheriff's office to do this work and that work out on the road, and I don't know that I was sent out to do anything like that.

MR. LANGROISE: Q. Did you ever have any orders from the Sheriff's office with respect to the enforcement of the prohibition laws?

A. I did.

Q. And were they that you were not to pick them up?

A. No.

Q. What were they?

MR. NUZUM: I would like to have what he means by the prohibition laws defined, whether it is the State law or the National law.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

A. My orders from the sheriff's office were if I ever saw anything of that kind going on, to make an arrest, if I ever saw anybody drinking at any place or saw any booze at any place, to arrest them.

MR. LANGROISE: Q. Did he ever tell you that you were to investigate to see whether or not the law was being violated?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. Now, as to that, I cannot remember whether I was told or not.

MR. LANGROISE: Did you ever make any

investigation of the Bilberg Hotel Bar during any of these years, that is 1925, 1926, 1927, 1928 and 1929 to see whether or not the prohibition laws were being violated in that place?

MR. NUZUM: I object as incompetent, immaterial, and request that the witness be given the information as to what prohibition laws he refers to.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. As far as making raids, I did not.

Q. Well, did you ever make any investigation of any kind?

MR. NUZUM: The same objection.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. Yes sir, I inquired from other parties.

MR. LANGROISE: Whom did you inquire from?

A. Anybody that I would meet on the street that I thought would probably tell me.

Q. What did they tell you?

A. They told me, "No", they did not know anything about it.

Q. No one in Mullan knew anything about them selling whiskey there that you inquired of?

MR. NUZUM: Just a moment. That is not a fair question.

THE COURT: Overruled.

A. I don't know that. I did not ask everybody.

Those I did ask were in Mullan. I knew some of the people in Mullan pretty well. None of those I asked had heard that the Bilberg was selling whiskey and gambling. I inquired of probably three or four during those years. That is all the investigation I ever made. I knew that in May, 1929 the Federal Government took Charley Fond out of the Bilberg Hotel for liquor violations. I did not make any investigation of the Bilberg Hotel after that. I did not ask Welch or any other officer about the place. I cannot say as to whether or not I asked any of the police officers of Mullan if the Bilberg Hotel Bar was violating the law during 1925, 1926, 1927, 1928 and 1929. I probably did. I did not ask Mr. Harwood. I did ask Mr. Welch. He told me he did not know anything about it. I did not ask Mr. Florin or Mr. Morphy or Mr. Needham. They were handling cigars, cigarettes and soft drinks in the Bilberg Hotel. They had a show case there about eight feet long or ten with cigarettes and cigars on the top part and rows of cigar boxes in the lower part. That is the only merchandise I would have any chance to see. I never stopped to look over the bar. Yes, I did care as to whether or not they were violating the law, and was interested.

Q. Then why didn't you try to find out?

MR. NUZUM: I object as incompetent and

immaterial. A man don't have to go in and take an inventory of what is in those places.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. Well, if I was supposed to go into the booze places there I would have to have a search warrant or something to go in there and search for stuff, wouldn't I?

That was a public place. I had ingress and egress of the place but not inside the bar. I was never in there long enough to watch. I did want to know what they were doing. I don't know how I would find out. I stayed across the street watching the place. I saw people coming in and out of there. I cannot say as to seeing any drunks around there. I might have seen somebody coming out of there with a little jag on, something like that. It did arouse a suspicion in my mind that they were selling liquor there. I would pick up the drunks and try to find out where they got their whiskey. They would not tell me anything. That is the only effort I made. I have not seen a good many drunks in and around the Bilberg. I did not stand back and watch them play cards there to find out what they were playing. I can't say that I didn't care. I was going on about my other business. It was my business to determine whether or not the laws of Idaho were being violated in Shoshone County. I have so many other places to go. I could have stayed there a few minutes to see whether the law was being violated.

It would not take very long to find out if they were playing poker. With reference to Joe Speck, I do not remember whether he came back to Mullan after he was arrested by the Federal Government the first time. I do not remember whether he was there in 1926 or 1927. He was there in 1928. I know the Government took him out of the Mullan Pool Hall in 1928 again. I do not believe I was in the Mullan Pool Hall in 1928. I believe a fellow by the name of Mushburn was running the Mullan Pool Hall. I did not make any investigation of the Mullan Pool Hall after Speck was taken out. I do not believe I was in the Mullan Pool Hall after that.

Q. Why didn't you?

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

A. I do not know of any particular reason why I wasn't.

Q. Weren't you interested in enforcing the laws?

A. I was.

MR. NUZUM: Just a moment. I object to that, there is no showing that after Speck was taken out, the law was being violated at any specific time.

THE COURT: He is asking whether he investigated to find out whether it was or not.

MR. NUZUM: He said "No", and then the ques-

tion was asked whether he wasn't interested in enforcing the law.

THE COURT: Proceed.

A. I made an investigation of the Mullan Pool Hall in 1928. I did not take anyone out of there. I went in and looked around. I didn't find anything. At one time I saw a couple of men sitting at a table and one was standing up at the cigar case and that is all I saw that day. I believe that was the only time I went there, the only investigation I made. I do not remember that I made inquiries of anyone about it. I didn't ask the police officers about it. I did not see any drunks in the Mullan Pool Hall. I did not see any drunks going in or coming out. I watched to see whether there were any drunks coming in or out of the Mullan Pool Hall. I watched the place very seldom. I never saw any. I watched the place for two or three minutes. Whenever I was up there I was always in a hurry to get back. I always had so much work to do that I had to get back. I know where the Central Bar hotel is located. I have not been there a number of times. I know Roy Appleton when I see him. I never knew him before this; did not know who he was. I believe I saw him in Wallace. I was not at the Central hotel bar when he was there that I remember of. I heard about the law being violated in the Central hotel bar in 1927 or the first part of 1928, when he was arrested. I never heard anything about it before the Federal Government picked him up in there.

I did not make any investigation after that because, if I remember right, they closed the place up at that time. They closed the place themselves, the government served the papers and Harwood closed the place up; that is my recollection. I am not sure, but that is my recollection that the place was closed. I did not talk to anybody. On one occasion I had to go up there. A fellow wanted some stuff out of there and the United States Marshal's office said to our office to go up there and take out some stuff that belonged to him. I do not remember who the party was, but it was then that I knew it was closed.

Q. You never heard of any gambling going on up in the Central Hotel Bar?

A. No, sir.

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

Q. Did you ever make any inquiry as to whether or not there was any gambling going on?

MR. NUZUM: I object to that as immaterial, whether he made any inquiry or not.

THE COURT: Overruled.

A. I do not remember being into that place during 1928. I might have. I do not remember.

No one talked to me about that place. I know where the Mullan Inn is located. I have been in there

only twice during 1928. I believe I was in there in 1926. I do not know whether I was in there in 1927. It was the time that Rantella was there. I knew him when he was an old saloon man, years ago. He was in the saloon business there when I was. I did not go in and see him frequently when he was in the Mullan Inn. Once in a while I went in there to find out where to serve papers on Finns. He was well acquainted with all the Finns and I got information as to where to go to serve the papers. He had a little counter—not a bar—it wasn't an old-time bar; it was used as a bar. Carried the same as the rest of them cigars, candy, cigarettes and soft drinks, pop and ginger ale. He had no fountain in there. I do not know whether he had a fellow in there with him or not. I never saw anybody working there, except him, when I was there. I did not see any games. There was a table there but I never saw anybody at the table, playing.

Q. During the time that Rantella was there, did you ever make inquiries to find out whether or not the laws of the State of Idaho were being violated, or of the United States.

MR. NUZUM: I object, because a violation of the laws of the United States is immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

I do not think I made inquiries specially as to whether the laws of the country were being violated in this place. I heard reports that laws were being vio-

lated in there. I knew Rantella was arrested at one time; that was not at Mullan. I raided Rantella when he had a place across the street from the Mullan Inn. It was a pool hall he had there, in one room, with two pool tables, and a counter and showcase and soft drink establishment, the same as the Mullan Inn. I think it was in 1924. He was arrested for having liquor in possession. I afterwards saw him in the Mullan Inn. I do not know whether he was running the same kind of business there or not. He had about the same stock, cigarettes, cigars and pop. That is all I know he had. I made the same investigation of his violating the laws as I did the others; looked around to see whether there was any drunks coming out or going in. I saw one or two going in, but none coming out. I arrested a couple of fellows there for drunkenness and investigated of them as to where they got their booze, and they would not tell me. I tried to find out whether or not they got booze there, but they wouldn't tell me. I arrested them for drunkenness. That is all the investigation I made of the Mullan Inn during the time Rantella was there. I did not know that Rantella was taken out of there in 1927 by the United States Government for violation of the prohibition laws. If he was taken out of there in 1927 it has slipped my memory. I do not remember that Rantella was taken out of there again in 1928. I made no inquiry with respect to that. I did not know of anyone else being taken out of the Mullan Inn in 1927. I do not remember that Arbliss was taken out of there in 1927. I

know where the Miners Club is located; that used to be the Montana Bar. I was in there in 1927 and 1928 and 1929. Trikla was running the place, I believe it was; I am not positive about that. I was in there occasionally collecting the pool table tax once every quarter. That was the only time I ever remember being in there. They had a bar in there.

Q. And handled the same line of stuff that the Mullan Inn did, and the other places were handling, did they?

MR. NUZUM: That is argumentative.

THE COURT: Read the question, Mr. Reporter?
(Reporter reads the question)

THE COURT: Overruled.

A. Yes, they were handling, so far as I could see, cigarettes, cigars, tobacco and candy. He might have had a little more stuff than some of the other places.

Q. You knew that the Government took Normile out of there in June, 1927, don't you?

MR. NUZUM: He has already answered the question.

THE COURT: Overruled.

MR. LANGROISE: I just suggested the name Normile to him.

THE COURT: I have overruled the objection.

MR. NUZUM: Exception.

A. I know that Normile was arrested one time by the Federals and brought to the jail until he put up a bond. I do not know what time that was.

Q. Did you make any investigation as to what kind of a place he was taken out of?

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

MR. NUZUM: It hasn't been shown that he knew he was taken out of there.

THE COURT: Proceed.

A. If I am not mistaken I think they closed that place up there for awhile. I am not asserting that as positive. It seems to me that they did. I made inquiries from the officers with respect to that place and they didn't know there was anything wrong about it.

Q. Did you ask them whether or not there was any gambling in there?

MR. NUZUM: I object to that as immaterial, whether or not there was any gambling.

THE COURT: Overruled.

A. I didn't.

Q. Were you interested in whether or not there was any gambling there?

A. I was.

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

Q. Why didn't you ask about it then?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

A. I was over there myself, and I didn't see any gambling going on. Trikla was there when I looked. I do not think they had card tables there. They had pool tables in there. I didn't see any card tables. I only made inquiries from the officers as to what was going on there. I do not remember that Trikla and McNeal were taken out of there in 1928 by the Government for violation of the prohibition laws. I do not remember of Trikla being taken out of there in March, 1928. I do not know that in 1929 Normile, McIntosh and Ray were taken out of that place, in June. I made no investigation of that place as to any of these people being taken out of there during the three years other than I have told about. I was acquainted with the Bolo in Mullan. I have been in there twice, I think. Not in all the time I have lived in Mullan. I think it was operated ten or fifteen years. I know Blackie Coughlin. He was in our jail at one time. Have had occasion to be in the Bolo twice, to my recollection, during the time that Coughlin was running the place. There was a man inside of the cigar counter, at the further end of the room, that he was talking to. I do not know as I ever heard his name. I did not see Coughlin. I saw this other man at the cigar counter, who was

running the place. There was a card room next to the cigar counter. It was after Coughlin had been in jail that I was in there. I never saw any bar there. I never saw any soft drinks of any kind in there. All I ever saw was card tables, cigarettes, tobaccos, pipes and stuff like that. There was no gambling when I was in there. I was there in the daytime. I don't suppose there would be gambling in the daytime. I never went in there in the dark that I remember of. I was not frequently in Mullan after dark. I go home and come back again in my car. Sometimes I went home for dinner at six o'clock and back again.

Q. Did you ever have any reports that the Bolo was running gambling and selling whiskey?

MR. NUZUM: I object to that as immaterial, insofar as the gambling is concerned. I would request that the question be segregated.

THE COURT: Overruled.

A. I had heard they were playing cards in there and gambling.

Q. Did you ever make an investigation?

A. No, except going in and looking.

Q. You never went in at night?

A. No sir.

Q. Why didn't you make any investigation?

MR. NUZUM: I object to that as immaterial, with reference to gambling.

THE COURT: Overruled.

A. I would not have occasion to go there at night. I go back to the jail to take care of the jail or probably be sent out some place.

Q. Weren't you ever in Mullan after dark?

A. Yes.

Q. Why didn't you make an investigation of the report that they were gambling there?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

A. As I said before, I didn't have occasion to. I was going up, and going back and doing a lot of work.

Q. You weren't interested as to whether or not they were gambling, or violating the law?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

A. Yes, I was.

I didn't make an investigation because I was doing other work and didn't have time to stay around there very long. I talked to the officers about the Bolo. I think I talked to both of the policemen once in a while. They didn't know anything about any booze. I did not ask anyone else there about it.

Q. As a matter of fact, Mullan was a wide open town, wasn't it?

MR. NUZUM: I object to that as immaterial and incompetent.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. You mean card playing?

Q. Card playing, as to whiskey and women?

A. There were things like that there.

Q. You knew it didn't you?

A. Just like the rest of them.

Q. Just what did you do, during the time you were deputy sheriff, to apprehend any violators of the law, or stop violations of the law?

MR. NUZUM: I object to that as irrelevant, immaterial and request that the question be limited to liquor.

THE COURT: Overruled.

A. "I do not know as I did—I do not know how to answer the question. I did what I could."

Q. "What did you do?"

A. I was not up there often enough to be able to do very much on that.

Q. What did you do?

A. When I was not there?

Q. What did you do with respect to this condition that existed?

A. I tried to find out what was going on.

I do not know as to doing anything else other than as I have detailed with respect to conditions that existed up there.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

I know Mr. Webb, the Prohibition Agent. I saw him around Mullan. I know Jesser. I saw him around Mullan. I know Julius Johnson. I saw him around Mullan.

Q. They had as much opportunity as you did—to—

MR. LANGROISE: I object to that as a conclusion.

THE COURT: Sustained.

RE-CROSS EXAMINATION

BY MR. LANGROISE:

They did not always have defendants with them when I saw them there. I do not remember seeing them with any defendants. I was at the jail and they brought them down to the jail. That is when I saw them.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

Webb plays on the ball team there. Plays often, on the Washington-Idaho League. That was in the years 1927 and 1928 at Mullan and Wallace.

R. E. WENIGER, one of the defendants, recalled for further testimony:

CROSS EXAMINATION

BY MR. LANGROISE:

I operated under a budget system during the last two years, in 1928 and 1929.

Q. I will ask you if it isn't a fact that you have not used, within anywheres near your budget, or the amount allowed for that nineteen months in the operation of the Sheriff's office?

A. It depends upon which part you are talking about.

Q. I am talking about that entire budget, for that period of time.

A. You can't interlock the budget. You have got your salary part, for the salaries, and the maintenance and transportation and so forth and I don't go in their part of it.

Q. Isn't it a fact that you are permitted to shift your budget amount from one balance to other parts, so long as you stay within the budget?

A. The way I understand it, salaries is the only one you can shift in the salary division, and the other part within their division.

Q. As a matter of fact, there is \$5,950.96 for that 19 months, which you have not spent?

A. If that is the fact, and that is the situation, I will certainly use it.

Q. That would be an average of \$285.00 a month?

A. I haven't figured it up. I won't stay on that

ground at all; I will have to look it over before I could state, that is, I would have to see the figures.

Q. Don't you see the budget?

A. We get a report from the county auditor—from the county auditor for the succeeding year before the budget closes up and the new budget coming in.

Q. You don't know it any other way at all?

A. I know about what we are using.

Q. You know what the budget is?

A. The figures, yes.

Q. You never checked it?

A. I try to keep within it.

Q. You know there is a large balance on that budget?

A. Nothing of the kind. I do not know what the Auditor's figures are at this time, after the bills have been paid. I haven't got a recent report.

Q. Could you find out for us?

A. I can't unless I go to Wallace.

Q. I will ask you if it isn't a fact that during the year 1928 you spent for transportation \$3,285.35?

A. I can't see how I spent that much.

Q. Isn't it a fact that you spent for transportation, \$3,285.35?

A. Can I see the figures? (Paper handed to witness.) That includes a new automobile; I think this car cost between \$1800.00 and \$1900.00.

Q. That is included in that entire expenditure for

1928—the rest is for gasoline and mileage for the use of yourself and other deputies?

A. We don't get any mileage.

Q. Don't you charge for county mileage?

A. No sir.

Q. What did you get from the county?

A. The expense of running the car, is all that is charged up to the county.

Q. Repairs, tires and gasoline

A. Yes, as to repairs—there is no mileage connected with it.

RE-DIRECT EXAMINATION

BY MR. NUZUM:

I suppose we made long trips during that year, to Clarkia. We had a murder case we investigated at that time. It was over 200 miles, round trip. We went to Portland on a trip; to Eugene, Oregon once; 300 miles beyond Portland. We went to Portland on a couple of cases. That was the same year we bought this automobile. We kept track of the gasoline, tires and actual repairs and that is the only thing we put into the transportation. When a car was worn out or replaced that was charged for by the transportation expense, the same as you would for any mileage. The only way I can get the balance of the money in the budget is by taking it up with the county auditor.

MR. LANGROISE: I should have corrected that to 21 months instead of 19 months Mr. Weniger, I find. That wouldn't change your answer in any way would it?

A. No I do not think so.

MR. NUZUM: Mr. Weniger, I notice on this sheet there is an appropriation for the year 1928 in the sum of \$19,360.00. Is that appropriation made monthly or in a lump sum?

A. It is made in a lump sum at the end of the year, the fiscal year.

Q. They make the appropriation a year in advance, don't they, in a budget?

A. Yes sir.

Q. There is so much authorized?

A. We call for so much and then the commissioners cut it down to what they think ought to be spent for the sheriff's office.

Q. Do you remember what you asked for for the year 1928?

A. I think it was around \$20,000.00.

Q. And I notice there is an appropriation of \$24,065.00?

A. That is what it is, \$24,000.00, and we used about \$19,000.00.

Q. And the nine months in 1929, do you know how much they appropriated to you in 1929?

A. Twenty thousand dollars.

Q. Do you know what the expenses have been for October and November that you have spent?

A. No, I cannot tell.

Q. The appropriation is made from the first of the year to the first of the year, or when does your fiscal year commence in the sheriff's office?

A. The first of the year.

Q. So that this statement of \$19,360.00 appropriated and \$17,385.64 spent only includes up to the first of October?

A. That is it. There are three months yet to go on.

Q. There are three months yet to go on in which you can use as much as you see fit?

A. Yes sir.

The county commissioners fix the salaries of the deputies and my salary is fixed by statute.

Q. As I understand you, the budget is for salaries and you cannot transfer anything from the salary to another fund?

A. No, that is the way I understand it.

Q. And then if there is any small sum left, such as there is, you may use that for other expenses?

A. I cannot use any money out of the transportation department into the salary department or the equipment department into the other, either one or the other.

Q. That is as you understand it?

A. That is the way I have been advised.

Q. Has there been anything appropriated for salaries for deputies in 1928 and 1929 that you did not use?

A. No sir, there has not.

Q. And the other appropriations, as I understand, you are not authorized to use to hire deputies?

A. That is my understanding.

RE-CROSS EXAMINATION

BY MR. LANGROISE:

The county commissioners have never disallowed any claim that I ever filed, not if I had special money in the budget. I asked for thirty thousand dollars in 1928 and they gave me twenty four thousand dollars. They cut it down to twenty four thousand dollars. I only spent twenty thousand dollars of that, but part of that twenty thousand dollars was set away for a new car and we did not buy a new car. I bought a new car this spring. I was mistaken when I said that in 1928 the expenditure for transportation of something over three thousand dollars included the new car. The amount used for transportation in 1928 did not include the new car. It included repairs on the old car.

THE COURT: "Is there any other testimony on behalf of any of the defendants or does this conclude the case for the defense as a whole.

MR. NUZUM: As far as I am concerned, I rest.

MR. LANGROISE: If your Honor please, during the course of the trial a certain matter came to our attention, and Mr. Sheridan has been in the courtroom since that time. We wish to call him for the purpose of impeaching Mr. Weniger with respect to certain things. He has been in here during all of the course of the trial.

MR. NUZUM: Your Honor, Mr. Sheridan was here when Weniger was asked the question. If you had excused him then, you might have gotten away from the order of exclusion of witnesses, but you kept him in here all the time Weniger was examined.

THE COURT: The objection is overruled.

RAY SHERIDAN, a witness called on behalf of plaintiff, testified:

DIRECT EXAMINATION

BY MR. LANGROISE:

My name is Ray Sheridan; my home is in San Francisco, but I am working out of Spokane. I am a special representative of the United Press. And have been attending court as a special representative of the United Press.

I have talked with Mr. Weniger on several occasions. I talked with him in the corridors here during recess in the afternoon of December 18, 1929.

MR. NUZUM: Now, if your Honor please, I ob-

ject to this, to the putting of the impeachment question, for this reason, that your Honor has in mind what it was; that that, if anything, was a part of the case in chief, and he cannot withhold any of his case in chief and then put it by way of impeachment, make it competent as rebuttal.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. I will ask you, Mr. Sheridan, if during the afternoon of December 18, 1929, in the corridors of this courthouse, you and Mr. Weniger being present, if Mr. Weniger did not say in substance and effect this to you: "The reason that I am in this jam with the Federal authorities, is that during my term of office as Sheriff of Shoshone County I have steadfastly refused to cooperate with the Federal dry agents and would not allow myself and men to become stool pigeons for the prohibition officers."

A. He did.

Q. And did he at the same time and during the same conversation, with the same parties present, state in substance: "For the last year Shoshone County has been overrun with undercover agents of the dry forces until it is now impossible for a stranger to enter the boundaries of the county without being placed under suspicion."

MR. NUZUM: The same objection, if your Honor please.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. And if during the same conversation and during the same time and the same parties being present, if he did not state in substance and effect: "That during the period that I have served as Sheriff of Shoshone County, I have minded my own business, pursuing and catching law-breakers, and when complaints against bootleggers and liquor handlers were registered in my office arrests were made, but I did not send my men snooping into the personal affairs of the citizens of the community."

MR. NUZUM: Just a moment. The same objection.

THE COURT: Overruled.

A. He did.

CROSS EXAMINATION

BY MR. NUZUM:

There was no original manuscript. I took notes not over two steps from the place where the interview occurred. I had a piece of paper and a lead pencil in my hand at the time. I was not making notes at the time I talked to Weniger. The notes were dictated over a special wire to Spokane and the notes were destroyed afterwards. The notes did not go over the wire. I had the notes in my hand. Then I destroyed the notes. I had no reason for destroying them. I stated in the

paper that this was an exclusive interview, in that I was the only newspaper man present. It was exclusive to the effect that I was the only member of the press present at that time. I did not mean that he was giving it to me and refusing to give it to others. I don't think that was the idea conveyed in the article.

Q. You don't think that the words "exclusive" means that it excludes everybody else?

A. No sir, it was not used in that sense.

Q. It was not an exclusive interview in that sense, was it?

A. No sir.

Q. And if your article stated it to be an exclusive interview, then that was incorrect, wasn't it?

A. I don't think so.

Q. You think that when a man whom you happen to be talking to alone makes a statement to you, that that is an exclusive interview?

A. At that time, yes sir.

Q. Will you answer the question, would you consider that as an exclusive statement?

A. I would. That is my understanding of the English of the word "exclusive." I did not put this in to give the idea to the world that I was alone and had gotten an interview with Weniger. I used it in the sense that I was the only member of the Press present at that time when he told me what he did. There were several in the corridor at the time. You were not so very far away when Weniger gave me the interview.

You were not over five steps from me right at the time of him telling me on the opposite side of the corridor.

Q. Did you say anything to me about getting an interview?

A. I did not.

Q. Did you let me know that you were getting an interview?

A. I did not.

Q. Do you think that I heard any of the interview?

A. I don't think so.

I cannot tell anybody that did hear the interview. I do not think anyone that I knew did. There were a couple of men standing right close that might have overheard some part of the conversation. I do not know who they were. I had read an interview that Mr. Weniger gave on the 13th of November in the Wallace Press Times. My interview was not practically rehashed from that interview. I did not take it from that and make up the balance. The first sentence I said I asked Weniger something about a photograph. I asked him, I said, "Sheriff, how about getting a picture of you for the United Press Syndicate?" He said, "The only picture you will ever get of me is when I get a number across my chest." I says, "Sheriff, you don't think they are going to stick you, do you?" He told me something about the Federal officers down there, something about the situation, he said that the reason that he was in this jam at the present time is that he had refused to cooperate with the Federals.

And then he went on to state something about the use of stool pigeons, the entire Shoshone County had been overrun with stool pigeons so that a stranger entering the boundaries of the county was immediately placed under suspicion. Then he told me something about the work. He said that every time anybody came to his office and made a complaint he always done his duty down there, and that when complaints were registered with him, why, he always went out and made arrests. That might not be in the correct order in which he stated it to me, but I think it was. When I made up these notes I think it was in the order that he gave me the interview.

Q. I believe you said that the second statement he made to you was something about the county being overrun by bootleggers.

A. It might have been the second or third, I don't recall exactly now. I think I gave the interview as Weniger gave it to me seriatim. In some cases I attempt to quote an individual literally. I do not give his language altogether. There are some grammatical changes. I say this is in substance what he said. I wrote my notes right here in the corridor and went across the street to the Coeur d'Alene Press office and dictated it right from the notes and memory, about ten minutes afterwards. I am working on a salary and the space has nothing to do with my compensation. I read the Wallace Press Times—it was read to me by Jack Holter at Wallace, Idaho; it was phoned to me from the galley proof in Wallace before it was published.

I never have read it in the Wallace Press Times. I read a part of it in the Chronicle. It was then repeated in the Chronicle. It is not the same as published in this interview here. I never made any attempt to read this article and revamp it.

Q. I hand you this Wallace Press Times. I wish you would glance at it and see if you remember that as the one that you say was phoned to you from the galley.

A. There is considerable typographical changes in it, it was not exactly worded this way at all. Practically the sense of the same quotes are what was used on the Chronicle, I think.

Q. Did you read the quotes as published in the Chronicle?

A. I think so, but I don't think they are used the same way as in the Wallace Press Times.

MR. NUZUM: I ask that this be marked for identification, if your Honor please.

MR. LANGROISE: That is all. The Government rests.

MR. NUZUM: If your Honor please, I offer in evidence the Wallace Press Times which has been referred to.

MR. LANGROISE: To which we object for the reason that—

THE COURT: The objection is sustained.

MR. NUZUM: Exception.

MR. NUZUM: The defendants, Weniger and Bloom and Anna Tornberg, first move to strike all the testimony of the last witness, Mr. Sheridan, who was on the stand, because he was in here and heard the testimony of the witness whom he was put on the stand to impeach, and kept in the room during that witness' testimony, in violation of the exclusion order which your Honor had made.

THE COURT: The motion is denied.

MR. NUZUM: Exception.

MR. NUZUM: The defendants Weniger and Bloom move to strike all of the testimony in the case with reference to gambling and prostitution as not in any manner involving a violation of any laws of the United States or any Federal law of any kind, character or description, and therefore not the subject of a conspiracy to violate any of the laws of the United States.

THE COURT: The motion is denied.

MR. NUZUM: Exception.

MR. NUZUM: The defendant R. E. Weniger at this time moves the court to instruct a verdict of not guilty and discharge him for the reason that the evidence in this case does not show any conspiracy on the part of the said Weniger or any acts on the part of the said Weniger which would tend to violate the National Prohibition Law or any laws of the United States. I

would like to be heard, if your Honor desires to hear me, on that question.

THE COURT: The motion will be denied.

MR. NUZUM: Exception.

MR. NUZUM: The defendant Charles Bloom moves that the court instruct a verdict of not guilty and discharge him for the reason that the evidence in the case wholly fails to connect him in any manner with a conspiracy to violate the National Prohibition Law or any law of the United States or to do anything more than to show perhaps a knowledge of the violation of the state law in reference to gambling in some instance, nothing with reference to prostitution, and that therefore there is nothing to be submitted to the jury in so far as he is concerned.

THE COURT: Motion is denied.

MR. NUZUM: Exception.

INSTRUCTIONS GIVEN TO JURY

THE COURT: Gentlemen of the jury: You have heard with commendable patience and attention the voluminous testimony offered during the progress of this protracted trial. You have listened attentively to the evidence and exhaustive argument of counsel on the respective sides. It now becomes the duty of the court to explain to you the essential elements of the charge set forth in the indictment in the case and to in-

struct you upon the applicable rules and principles of law by which you are to be guided in your deliberations, and it is your duty to accept these instructions as correct and so far as the law of the case is concerned to be guided by them.

The indictment as originally returned by the Grand Jury named forty four defendants, but your deliberations will have to do only with the twenty nine of these defendants now on trial. These defendants are: R. E. Weniger, Charles Bloom, Hartcourt Morphy, F. O. Welch, Arthur J. Harwood, John Wheatley, George Huston, Charles Ristau, Henry Foss, Joseph Speck, John Malloy, John Thompson, William E. Coughlin, Charles Fond, Charles Anderson, Waino Pikkerainen, Gus Aro, Walter Johnson, Mike Kennedy, Roy Appleton, Milford Gardner, Herman Arbliss, Bertha Strom, Babe Kelly, Aggie West, Jimmie Ryan, Mona McDonald, Anna Tornberg and Regina Dalo.

The following defendants named in the indictment are not now on trial and your deliberations will not have to do with them: Joseph Florin, Nick Tasulin, Louis Trikla, James Normile, H. R. Wilcox, Herbert Anderson, John Rantella, Frank Hahn, William Hedlund, Charles Hartley, Leauro Aro, Henry Kohkones, John Jaskara, Clarence McMurray and Elmer Olson.

The indictment contains a single count and the crime charged is that of conspiracy to commit an offense against the United States, and is based on Section 37 of the penal code. The indictment charges that the

defendants named in it, in the Village of Mullan, County of Shoshone, State and District of Idaho, and in the Northern Division of said District and within the jurisdiction of this Court, on or about the 1st day of February, 1924 and thereafter continuously from that date to and including the filing of the indictment, namely, November 11, 1929, did willfully, corruptly, unlawfully, knowingly, and feloniously conspire and agree together and with each other to commit certain offenses against the United States of America and the laws thereof, namely: to possess, to transport, to sell and to manufacture intoxicating liquor containing more than one half of one per centum of alcohol by volume, and fit for beverage purposes, namely, wine, beer and whiskey, in violation of section 3, section 27 and section 26 of title 2 of the National Prohibition Act, and also to maintain in said village of Mullan, county, state, district and division aforesaid, a large number of common nuisances, the exact number of which is to the grand jurors unknown, to-wit, rooms, houses, buildings, structures and places where intoxicating liquor containing more than one half of one per centum of alcohol by volume and fit for beverage purposes, namely, beer, wine and whiskey, were to be manufactured, sold, kept for sale and bartered for beverage purposes, in violation of section 21 of title 2 of the aforesaid act of congress known as the National Prohibition Act.

It is further charged in the indictment that at stated times and places in the indictment set forth, in furtherance and pursuance of, and to carry out the unlawful

purpose and to effect the object of the alleged unlawful conspiracy, the defendants did the following overt acts:

1. That on or about the 4th day of February, 1924, in the village of Mullan, county of Shoshone, state and district of Idaho, Elmer Olson and Arthur J. Harwood, then and there being trustees of said village of Mullan, as such trustees voted for the passage of ordinance No. 105 of said village of Mullan, Idaho.

2. That on or about the 4th day of February, 1924, in the village of Mullan, county of Shoshone, state and district of Idaho, one J. E. Gyde, being then and there an attorney at law, as such attorney for the said village of Mullan in conference advised Elmer Olson and Arthur J. Harwood that they could not legally permit persons to deal in intoxicating liquor.

3. That on or about the 10th day of November, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Arthur J. Harwood, John Wheatley, Charles Ristau, Henry Foss and George Huston, being then and there trustees of the said village of Mullan, as such trustees voted to appoint one F. O. Welch a police officer of the said village of Mullan, Idaho.

4. That on or about the 5th day of November, 1925, in the village of Mullan, county of Shoshone, state and district of Idaho, Arthur J. Harwood, Elmer Olson and John Wheatley, being then and there trustees of the village of Mullan, as such trustees voted to appoint one Joseph Florin a peace officer of said village of Mullan, Idaho.

5. That on or about the 25th day of November, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Charles Bloom received from Anthony McGill thirty dollars.

6. That on or about the 25th day of November, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Charles Bloom warned Anthony McGill that the Federal prohibition agents were coming to raid the Mullan Inn.

7. That on or about the 25th day of October, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Charles Bloom drank whiskey in a place known as the Mullan Inn.

8. That on or about the 5th day of July, 1929, Arthur J. Harwood, John Wheatley, Charles Ristau, Henry Foss and F. O. Welch, in the village of Mullan, county of Shoshone, state and district of Idaho, discontinued the collection of money from persons in the said village of Mullan who were violating the National prohibition act.

9. That on or about the 5th day of July, A. D., 1929, Arthur J. Harwood, John Wheatley, Charles Ristau and Henry Foss, in the village of Mullan, county of Shoshone, state and district of Idaho, being then and there trustees of the said village of Mullan, as such trustees agreed to and did discontinue the issuing of licenses for so-called soft drink places of business.

10. That on or about the 5th day of March, 1928

in the village of Mullan, county of Shoshone, state and district of Idaho, Joseph Speck sold five drinks of whiskey.

11. That on or about the 24th day of October, 1927, in the village of Mullan, county of Shoshone, state and district of Idaho, Charles Hartley sold one drink of whiskey.

12. That on or about the 11th day of February, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, at the Bolo Bar, William E. Coughlin possessed an unknown amount of whiskey.

13. That on or about the 28th day of June, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, Mike Kennedy sold two drinks of whiskey.

14. That on or about the 5th day of March, 1926, in the village of Mullan, county of Shoshone, state and district of Idaho, Curley Gardner sold four drinks of whiskey.

15. That on or about the 5th day of March, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, Roy Appleton sold twelve drinks of whiskey.

16. That on or about the 18th day of May, 1927, in the village of Mullan, county of Shoshone, state and district of Idaho, James Normile sold one drink of whiskey.

17. That on or about the 29th day of June, 1927, in the village of Mullan, county of Shoshone, state and district of Idaho, Louis Trikla had in his possession one pint of whiskey.

18. That on or about the 13th day of April, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, Charles Fond had in his possession an unknown amount of whiskey.

19. That on or about the 5th day of March, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, H. R. Wilcox sold four pints of beer.

20. That on or about the 5th day of March, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Frank Hahn sold two drinks of whiskey.

21. That on or about the 5th day of March, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, John Rantella sold one pint of whiskey.

22. That on or about the 3rd day of August, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Mona McDonald had in her possession forty two bottles of beer.

23. That on or about the 26th day of December, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Leauro Aro had in his possession an unknown amount of beer and whiskey.

24. That on or about the 22nd day of May, 1927, in the village of Mullan, county of Shoshone, state and district of Idaho, John Jaskara sold two drinks of whiskey.

25. That on or about the 27th day of December, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, F. O. Welch delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquor.

26. That on or about the 27th day of January, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, F. O. Welch delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquors.

27. That on or about the 27th day of February, 1929, in the village of Mullan, county of Shoshone, state and district of Idaho, F. O. Welch delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquor.

28. That on or about the 27th day of February, 1928, in the village of Mullan, county of Shoshone, state and district of Idaho, Joseph Florin delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquor.

29. That on or about the 28th day of March, 1927, in the village of Mullan, county of Shoshone, state and District of Idaho, Joseph Florin delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquor.

30. That on or about the 28th day of April, 1927, in the village of Mullan, county of Shoshone, state and district of Idaho, Joseph Florin delivered to J. L. Martin a list showing payments by persons dealing in intoxicating liquor.

In this connection, Gentlemen of the jury, I instruct you that the alleged overt acts numbered 2, 8 and 9 are not to be considered by you as overt acts for the purposes of this trial.

Overt act No. 2 relates to the advice given Elmer Olson and Arthur J. Harwood that they could not legally permit persons to deal in intoxicating liquor. This in law is not an act done in furtherance of the alleged conspiracy.

Overt act No. 8 relates to the alleged discontinuance by Harwood, Wheatley, Ristau, Foss and Welch of the collection of money from persons in the village of Mullan who, it is alleged, were violating the National Prohibition Act. This is not an overt act within the meaning of the law.

Overt act No. 9 relates to the allegation that Harwood, Wheatley, Ristau and Foss, on or about the 5th day of July, 1929, discontinued the issuing of licenses for so-called soft drink places of business. This in law is not an overt act.

You will understand, gentlemen of the jury, that these three alleged overt acts which are withdrawn from your consideration must not be taken into account by you as overt acts, in arriving at your verdict in this case.

In saying that these three specified acts are not to be considered by you as overt acts, I do not mean that you have no right to consider the testimony in regard to these transactions. What I do mean is that these transactions are not in law overt acts as I shall define "overt acts" later and in the instructions.

As I have already said, the charge set forth in the indictment is that defined by section 37 of the United States penal code, the offense of conspiracy to commit offenses against the United States. The portion of this statute upon which this indictment is based provides as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as the statute prescribes."

You will observe, and I charge you, that the essential elements of this offense are two: first, the act of conspiring to commit an offense against the United States; and, secondly, the doing by one or more of the parties to the conspiracy of an act to effect the object of the conspiracy.

Before the defendants or any of them can be found guilty, in addition to proving the essential elements of the charge as I have explained such elements to you, the government must also establish beyond all reasonable doubt that the conspiracy alleged in the indictment was formed or entered into by the defendants in Mul-

lan, Shoshone County, Idaho or that some one or more of the overt acts alleged in the indictment were in fact committed as alleged in Mullan, Shoshone County, Idaho, and within three years next before the finding of the indictment.

A conspiracy, gentlemen of the jury, is a corrupt agreement or combination between two or more persons to commit an offense or offenses against the United States. This corrupt agreement or combination is the gist of the offense but the performance of one or more of the overt acts, charged in the indictment to effect the object of the conspiracy is necessary to make the offense indictable and punishable under the statute.

By the expression "an act to effect the object of the conspiracy," commonly called an overt act, is meant an act done by one or more of the conspirators, subsequent to the formation of the corrupt agreement or combination and during its existence for the purpose of carrying such agreement or combination into effect. The mere corrupt agreement or combination alone is not sufficient to constitute an offense under this statute, but subsequent to the formation of said corrupt agreement or combination and during its existence one or more of the conspirators must have done or committed some additional act charged in the indictment aimed at the accomplishment of the unlawful purpose and tending to carry into effect the unlawful enterprise.

A charge of conspiracy is rarely susceptible of proof by direct testimony alone. It is well settled that the

evidence in proof of conspiracy may be, and from the nature of the offense generally must be, circumstantial. A concerted action to violate the law is usually secret and is ordinarily shown by separate, independent acts, each tending to support and establish a common design and purpose on the part of those aiding or participating in such acts. This common design and purpose is the essence of the crime of conspiracy, but to establish it, it is not necessary to prove that the parties came together formally and actually agreed in terms to have that design or purpose or to pursue by concert of action or by common means. The jury will be justified in inferring the existence of a conspiracy if the government satisfies you beyond a reasonable doubt by the testimony of credible witnesses that any two or more of the persons named in the indictment aimed by their acts to accomplish the same unlawful purpose or object, one performing one part thereof and the other or others another part of the same so as to complete it, the acts of each ever leading to the same unlawful result, although the parties so participating may never have met together to concert the means or to give effect to the unlawful design and purpose. Nor is it necessary that a conspiracy shall originate with the persons charged. Every one coming into a conspiracy at any stage of the proceedings with knowledge of its existence is regarded in law as a party to the conspiracy and as a party to all the acts done by any of the other parties to the conspiracy, either before or afterwards, in pursuance of the common design and purpose.

One charged with conspiracy with many others may be convicted on proof of his conspiring with any of such others without proof of conspiracy participated in by all of them. Mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. In other words, conspiracy implies concert of design and purpose, but it does not contemplate the participation by each conspirator in every detail of its execution, for the statute provides if a conspiracy is entered into to commit any offense against the United States and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to the conspiracy is guilty. Participation in the design or purpose of the unlawful enterprise is the essential thing, but it is not necessary that each conspirator participate in the doing of every act committed in furtherance of such design and purpose.

If you find from the evidence beyond all reasonable doubt that a conspiracy existed as charged in the indictment, then the acts and declarations of each party to such conspiracy done or made in furtherance of the agreement, design and purpose of carrying the criminal enterprise into effect are in contemplation of law the acts and declarations of all the parties to the conspiracy and are binding on all such parties; but for the purpose of establishing the existence of a conspiracy, or the connection of any defendant with it, the statements and de-

clarations of each defendant must be confined to the defendant making them, and no other defendant is bound by such statements or declarations.

Gentlemen of the jury, whether a conspiracy is proved by direct or circumstantial evidence, its existence must be established to your satisfaction beyond all reasonable doubt and where circumstantial evidence is relied on the circumstances must be proved to your satisfaction beyond all reasonable doubt, and when so proved they must not only be consistent with the existence of the conspiracy charged but they must be inconsistent with every other reasonable conclusion. You will note I do not say with every other "conceivable" conclusion. I say it must be inconsistent with every other "reasonable" conclusion.

A conspiracy to commit an offense against the United States means an unlawful agreement to do some act which by some law of the United States has been made a crime.

I further instruct you that persons conspire to commit an offense against the United States when they conspire to do an act or concerts of acts which can be carried into effect only by violating the criminal laws of the United States. When parties conspire to commit acts and things which necessarily and inevitably must constitute a violation of the criminal laws of the United States, then such parties conspire to commit an offense against the United States; and a party conspires to commit an offense against the United States when he

conspires to bring about the commission of such offense by another or others.

In this connection I further instruct you that it is not necessary that the sole object of a conspiracy be to commit an offense against the United States. It is sufficient if one of the objects of the conspiracy is so to commit such an offense.

A conspiracy may have a number of objects, some of which may not involve the commission of an offense against the United States, but if one of the objects and purposes of the conspiracy is to commit an offense against the United States and overt acts are committed for the purpose of carrying the conspiracy into effect, that in law is sufficient. I charge you, however, that the only object of the claimed conspiracy in this case over which the United States and its courts have any jurisdiction is the one set forth in the indictment, namely, a conspiracy to commit violations of the National Prohibition Act. A conspiracy with respect to gambling or prostitution, or any of the ordinary forms of municipal vice, if confined to such places, would not be a conspiracy to commit an offense against the United States, for the reason that the United States and its courts have no jurisdiction with respect to gambling, prostitution and municipal vice.

The only object of the claimed conspiracy which you may take into account in arriving at your verdict in this case is the object alleged in the indictment, namely, that the parties conspired to violate the National Pro-

hibition Act in the respects enumerated and set forth in the indictment.

The testimony in this case with respect to gambling and prostitution in the village of Mullan was admitted because it was so interwoven with the charge of violating the laws of the United States, namely, the prohibition laws, that it was competent for you to take it into consideration in connection with all the other facts and circumstances disclosed by the evidence in the case as a shedding light on the question of whether there was a conspiracy to violate the prohibition laws, if in your judgment such evidence has any such effect.

With respect to the defendants, R. E. Weniger and Charles Bloom, Sheriff and Deputy Sheriff respectively of Shoshone County, Idaho, and the defendants, R. O. Welch and Hartcort Morphy, policemen of the village of Mullan, Idaho, I instruct you that these defendants are not on trial for a mere failure to enforce the prohibition laws, state or national in the village of Mullan or in the county of Shoshone. These defendants are not accused of acts of omission but of commission, namely, that they entered into the conspiracy described in the indictment to violate the prohibition laws of the United States in the particulars set forth in the indictment.

But, gentlemen of the jury, in this connection I instruct you that where individuals are the occupants of a public office or offices and whose duties in whole or in part require of them the enforcement of the liquor laws and the arrest of those engaged in such law violation, and it is made to appear that within the jurisdiction of

such offices, such laws are openly, notoriously and continuously violated in such manner and under such circumstances that the jury is satisfied beyond all reasonable doubt that such peace officers in fact knew of such flagrant, open and continuous violations, if you find there were such, and that such officers did little or nothing to enforce the laws that were being violated by arresting those engaged in their violation. These are facts and circumstances which you have a right to take into consideration together with all the other facts and circumstances disclosed by the evidence in the case as shedding light on whether or not such peace officers, or any of them, actually joined the conspiracy charged in the indictment and aided and permitted its execution. In such circumstances you should inquire whether such acquiescence in such law violation, if you find there was such, was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers, or was the conduct passive and intentional with full knowledge of a conspiracy to bring about such violation and was passed with a view and for the purpose of protecting and aiding it. In other words, was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from performing the duty with the knowledge of the violations for the purpose of aiding and assisting in the conspiracy to violate the laws which were being violated?

Mere lack of diligence in the performance of their

duties on the part of public officers is not enough. There must in addition be proof of knowledge of facts showing an intention on the part of the officers in question to aid in the unlawful act by refraining purposely from doing that which they were by the duties of their office bound to do, with the intent and for the purpose of becoming a party to and aiding in the execution of a conspiracy to violate those laws. This you must determine by your verdict in the light of all fact and circumstances disclosed by the testimony in the case.

Gentlemen of the jury, it is in proof that **H**arwood, **W**heatley, **R**istau, **F**oss and **H**uston were during the existence of the conspiracy alleged in the indictment trustees of the village of Mullan. If they or any of them actually entered into the conspiracy charged in the indictment, their official character of trustees of the village of Mullan does not render them any the less guilty. In other words, if they were members of the conspiracy charged in the indictment, the fact of their official position does not render them immune from punishment for that offense. On the other hand, they are not to be found guilty merely because of such official position. Before you can find these named defendants guilty as charged in the indictment, you must find from the evidence beyond all reasonable doubt that they actively and intentionally entered into a corrupt agreement or combination to violate the laws of the United States in the respects enumerated in the indictment, and that some overt act was committed by one or more of the conspirators for the purpose of carrying such conspira-

cy into effect. These defendants are not charged with mere acquiescence in law violation. They are affirmatively charged with conspiring and combining to bring about and to cause such violation.

I further instruct you that it is not necessary to guilt that the conspirators or any of them personally profited or secured personal advantages to themselves from the conspiracy, if any. It is sufficient for conviction if you find beyond a reasonable doubt the existence of the conspiracy, the doing of some overt act charged in the indictment for the purpose of carrying the conspiracy into effect, and that the defendants were members of and parties to such conspiracy wholly without regard to whether any or all of them profited, could profit or expected to profit from the conspiracy or its operation.

In this connection, however, I instruct you that you have the right to take into consideration along with all the other facts and circumstances in the case the fact that there was no profit either actual or expected, if you should find such to be the fact, on the part of any defendant, in shedding light upon whether or not such defendant was in fact a party to the conspiracy alleged in the indictment.

As I have said, the charge in the indictment is that of conspiracy, and thus an entirely separate and distinct offense from that of violating the provisions of the National Prohibition Act. Accordingly the fact that some of the defendants in this case may have heretofore been convicted either upon plea or by trial of violations

of the National Prohibition Act does not constitute any defense to the charge of conspiracy set forth in the indictment in this case.

I further instruct you that the mere fact that one may be the employee of a conspirator does not of itself excuse him. If such an employee does acts in furtherance of the alleged conspiracy with knowledge of its existence and for the purpose of carrying it into effect, he is not excused by showing that in doing anything he may have done he was employed by another to perform such acts or to do such things.

Under the laws of the United States a crime amounting to a felony must be prosecuted within three years after its commission or it will be barred by the statutes of limitation. But in this connection I instruct you there is an exception in the case of continuing crimes. You will observe that the indictment was filed on the 11th day of November, 1929. In the indictment it is alleged that on or about the 1st day of February, 1924 and thereafter continuously from that date to and including the filing of the indictment, the defendants unlawfully conspired in the manner set forth in detail. Where a continuing conspiracy is originally formed more than three years prior to the indictment and alleged overt acts in pursuance thereof have been done or committed both prior to and within three years next before the indictment, the prosecution will not be barred by limitation if the government alleges and proves beyond a

reasonable doubt that the conspiracy was continued in force and operation to a time within the three years next before the filing of the indictment of the case. In other words, where a continuing conspiracy is alleged and proved and in addition it is established that one or more of the overt acts alleged in the indictment were in fact committed within three years next before the filing of the indictment, the prosecution is not barred by limitation even though the original conspiracy relied on for conviction was formed more than three years prior to the indictment.

A conspiracy is a continued one where it contemplates various and repeated overt acts extending over a period of time and the consequent continuance of the conspiracy beyond the commission of the first one of such acts.

From what I have already said it follows that the jury in its deliberations in this case is brought to a consideration of three primary questions, and the court suggests that when you retire to deliberate upon your verdict you may find it convenient to consider them separately, and in this order:

1. Has the government proved the existence of such conspiracy as is alleged in the indictment?
2. Were any of the alleged overt acts performed by one or more of the parties to the conspiracy to effect the object thereof within three years next before the filing of the indictment? And
3. If such a conspiracy existed and such overt acts

were committed, were any of the defendants now on trial members of such conspiracy? And, if so, which of the defendants?

In this connection, gentlemen of the jury, I charge you that the witnesses Martin J. Needham, Anthony McGill, J. L. Martin, Helen Grant, Hazel Graham, alias Hazel Harris, Bedella McKinney and Ray De-lamo in this case are what are known in law as accomplices, and I instruct you that the fact that these witnesses are accomplices operates largely against the credibility of their testimony, but the jury is not bound to reject their testimony merely because the witnesses are accomplices. While ordinarily it would be unsafe to convict upon the uncorroborated testimony of an accomplice in the case, the law is well settled that accomplices are competent witnesses and it is your duty to consider their testimony. In doing this, however, you should scrutinize it with care and accept it with caution. You should test its truth by inquiring into the probable motives which prompted it and to what extent, if any, such motives may have warped or colored it. You should look into the testimony of other witnesses in the case for corroborating facts or circumstances. Where the testimony of an accomplice is supported in material respects you are justified in crediting it, but where it is not thus supported you should not rely upon it unless, after the exercise of great caution in analyzing it, it produces in your mind a positive conviction of its truth, in which case you are justified in acting upon it even in the utter absence of corroboration.

I further charge you that one accomplice within the meaning of the rule I have just given you cannot corroborate the testimony of another accomplice. What is meant by corroboration in this connection is corroboration from credible witnesses who are not accomplices or corroboration arising out of known or established facts in the case.

The defendants, Weniger, Bloom, Harwood, Wheatley, Huston, Ristau, Foss, Welch and Morphy have each offered testimony tending to show that each has born in the community in which he lives a good reputation as a law-abiding, upright citizen. If that reputation has been established to your satisfaction in the case of any or all of these defendants, this is a fact which you must take into consideration in passing upon his or their guilt or innocence. Of course, if you are satisfied beyond all reasonable doubt that any defendant is guilty of the crime with which he is charged in the indictment, a good reputation cannot save him, but in determining whether or not such a defendant is guilty you should take into consideration his good reputation as shown by the testimony in connection with all of the other evidence in the case in determining whether or not a reasonable doubt exists as to his guilt. You must not wait until a reasonable doubt exists in your mind before taking into account evidence of good reputation on the part of any defendant, but in determining whether there is a reasonable doubt such evidence must be taken into account, for it might be that

such evidence alone would give rise to a reasonable doubt.

Evidence also has been introduced tending to show that the witnesses Needham and Anthony McGill have a bad reputation for truth and veracity in the community in which they live. This testimony also must be taken into account by you together with all the other facts and circumstances in the case in determining the weight or the credit to be given to the testimony of these witnesses severally.

While the defendants are jointly indicted and are being jointly tried, it is your duty, nevertheless, to consider and apply the testimony to each defendant separately and to determine the guilt or innocence of each defendant as the result of so considering and applying the evidence to him or her; and it is competent for you to find some of the defendants guilty and others not guilty, depending upon your conclusions based upon the evidence and the instructions of the court.

Under the laws of the United States a person accused of crime has the privilege of taking the witness stand and testifying in his own behalf, if he elects to do so, but he is under no obligation to do so. The privilege is one which he may exercise or not as he pleases, and if he elects not to testify, no inference of guilt or other unfavorable inference shall be drawn against him because of his failure to testify.

Each of the defendants now on trial has entered a

plea of not guilty to the charge set forth in the indictment, and the effect of these pleas is to cast upon the government the burden of establishing each and every essential of the elements charged to your satisfaction beyond a reasonable doubt. The defendants and each of them are presumed to be innocent of the crime with which they are accused, and this presumption is one of their substantial and important rights not to be ignored or lightly to be considered either by court or jury. It is one of the safeguards which the law places about all persons accused of crime, no matter what its degree, and it attaches to the defendants and continues with them throughout all stages of the trial and throughout all stages of your deliberations until it has been met and overcome by the evidence in the case and guilt has been established beyond all reasonable doubts, notwithstanding the presumption of innocence with which this law surrounds the accused.

By the expression "reasonable doubt" as used in these instructions is meant a doubt which is based upon reason. It is such a doubt as, if entertained by a man of ordinary prudence, sensibility and decision in transacting the graver or more important affairs of life, he would allow to have influence with him or cause him to pause and hesitate before acting thereon. It must be a real and a substantial doubt, not an imaginary or whimsical one conjured in the mind for the purpose of evading the performance of an unpleasant duty. It must arise out of an honest-minded, common sense consideration of the evidence in the case or from lack of

evidence. If after carefully considering, analyzing and comparing all the evidence in the case you are able to say on your oaths and consciences as jurors that from the evidence you have an abiding conviction of the defendants' guilt to a moral certainty, then you are convinced beyond all reasonable doubt and should convict. On the other hand, if after so considering the evidence you are unable to say that you do have such abiding conviction, but on the contrary, there is in your minds a doubt for which you are able to assign an intelligent reason or reasons satisfactory to yourselves as reasonable men, then there is a reasonable doubt and any such doubt must be resolved in favor of all the defendants concerning whom such doubt exists.

You are the sole and exclusive judges of what is the evidence in the case and of the weight and credit to be given the testimony of the several witnesses who have testified before you. In performing this task you are at liberty to take into consideration the conduct, appearance and demeanor of the witness while testifying, the apparent candor and frankness displayed by the witness, or the want of such qualities, if any such want exists; the reasonableness or unreasonableness of the story told by the witness; its probability or improbability as measured by your common experiences in life; the opportunity or lack of opportunity on the part of any witness of knowing or being informed concerning the matters about which he testifies; the intelligence or lack of intelligence displayed by the witness; any prejudice or bias disclosed by a witness in testi-

fyng which in your judgment would cause the witness to warp or color or bias his testimony one way or the other; the interest or lack of interest on the part of any witness in the outcome of this case; in short, all the facts and circumstances surrounding the witnesses as disclosed from the witness stand, and in the light of all these considerations give to the testimony of each witness that fair and reasonable weight and consideration which in your practical judgment as men of common sense versed in the ordinary affairs of life which appeals to you it is justly entitled to receive at your hands and no more.

I further instruct you if you find that any witness in the case has willfully testified falsely as to any material fact in the case, then you are at liberty to disregard the entire testimony of any such witness except in so far as it is corroborated by other evidence of a credible character.

Each member of the jury must be satisfied of the guilt of the accused beyond a reasonable doubt. It is the duty of a jury, however, to consider together the facts of the case and to reason and deliberate together in an effort to reach a verdict. If after so considering, reasoning, and deliberating together, a juror is not convinced, he is not called upon to surrender his convictions. It will require the concurrence of the entire jury in order to return a verdict.

When you retire to your room to deliberate you will select one of your number as foreman who will sign

your verdict for you when it is agreed upon, and represent you as your spokesman in the further conduct of this case in court.

You will have with you in the jury room the indictment in the case, all of the exhibits which have been introduced in evidence during the progress of the trial, and a blank form of verdict. Before the word "guilty" in the blank form of verdict as to each defendant you will notice a space underscored on the typewriter in which you can insert the word "not" in the event your verdict is not guilty. You will understand that the form of this verdict is not intended to indicate anything as to the character of verdict you should return. It is prepared in this manner solely as a matter of convenience.

You, of course, understand that the indictment in the case is not to be considered as evidence against the defendants, nor does it give rise to any inference of guilt against them. It is merely the formal accusation which the defendants are called upon to meet.

In conclusion, gentlemen of the jury, I admonish you that in arriving at your verdict you must be guided solely by the evidence and instructions of the court in accordance with the solemn oath which you have taken. There is no place in your deliberations for prejudice or bias or sympathy or sentiment. Let your verdict be impartial and fair—fair to the Government and fair to the defendants charged with a violation of its laws. And let me remind you that the only commendation

worth while in the performance of an important public duty is that which a wholesome conscience and an intelligent self respect join in giving by bearing witness that you have faithfully and honestly discharged that duty as God has given it to you to see it and to discharge it.

You had better take your exceptions now, gentlemen.

MR. NUZUM: The defendants Weniger and Bloom desire to except to the first definition of conspiracy as to the meeting of the minds. If I had those instructions, I could give the numbers of them.

THE COURT: They are not numbered.

MR. NUZUM: And also the instructions which said that a conspiracy might exist with a number of parties but one of the objects of which must be to violate the United States law; and that portion of the instruction which allowed the jury to take into consideration the prostitution and gambling, and that portion of the instruction with reference to the public offices, our theory being as disclosed by the requests we have made. May I take the exceptions by number as to those requests that we have made? I have not had time to look your instructions all over, but I will take an exception to each one of them we have asked.

THE COURT: All right.

MR. NUZUM: I except to the refusal of the court to give instruction No. 1, 2, 3, 4, 5, 6, 7 and 8, and to the refusal of the court to give 1a, 2a, 3a, 4a, 5a,

and 6a. That is on behalf of the defendants Weniger and Bloom. And then, I don't know whether these other gentlemen want to join with me or not. There were some instructions requested as 1b and right down the line, but on behalf of Weniger and Bloom I except to the refusal of the court to give instructions 1b, 2b, 3b, 4b, 5b and 6b. An

INSTRUCTIONS REQUESTED BY DEFENDANTS.

I.

The first conspiracy charged in the indictment is that the defendants named did "conspire and agree together and with each other to commit certain offenses against the United State of America, and the laws thereof, to-wit, to possess, to transport, to sell and to manufacture intoxicating liquors containing more than one-half of one per cent. of alcohol by volume, and fit for beverage purposes, to-wit, wine, beer and whiskey, in violation of Section 3, Section 25 and Section 26 of Title II of the Act of Congress of October 28th, 1919, commonly known as the National Prohibition Act." The court construes the language of the indictment to mean that such of them as may have entered into the conspiracy conspired to commit jointly by their own acts or the acts of their agents the offenses of possessing, transporting, selling or manufacturing the intoxicating liquors described in the indictment. Under the language of the indictment it is not enough

that the defendants conspired to commit some other offense, however criminal it may have been. They must have conspired jointly by themselves or agents to possess, transport, sell and manufacture the intoxicating liquors, and unless you can find from the testimony beyond a reasonable doubt that they are guilty of conspiring jointly, by the acts of themselves or their agents, to possess, transport, sell or manufacture the intoxicating liquors described in the indictment, it is your duty to acquit them.

II.

The second conspiracy charged is that the defendants conspired to maintain in the Village of Mullan a large number of common nuisances, to-wit, rooms, houses, buildings, structures and places where intoxicating liquors containing more than one-half of one per cent. of alcohol by volume, and fit for beverage purposes, to-wit, beer, wine and whiskey were to be manufactured, sold, kept for sale, and bartered for beverage purposes. The charge is that the defendants conspired to themselves jointly maintain the common nuisance described in the indictment. You are not concerned with any other conspiracy, however criminal it may have been, and if you find that the conspiracy as charged in the sense that I have explained it is not sustained by evidence sufficient to satisfy you beyond a reasonable doubt of the guilt of the accused, it is your duty to acquit them, or such of them as you find not to have entered into the conspiracy.

III.

The indictment alleges that Weniger and Bloom were members of the conspiracy charged. It is in proof that said persons are officers of the State of Idaho, to-wit, the sheriff of Shoshone County, Idaho and his deputies. If they actually entered into a conspiracy to maintain the nuisance charged, or to keep, possess, sell, transport or manufacture intoxicating liquors, then their official character does not render them immune from punishment for that offense. But the court charges you that their official character as state officers does not make them guilty, however remiss they may have been, if they were remiss, in failing to enforce the laws of the State of Idaho against the commission of nuisances or other infractions of the state law. It is no part of their duty as officers of the state, under the laws of the United States, to make arrests without a proper warrant under the laws of the United States, for infractions of the prohibition law, or to otherwise endeavor to enforce such laws, and there mere failure to make such arrests, or to otherwise endeavor to enforce such laws, if that be the only evidence to connect them with the conspiracy charged, would not make them guilty under the indictment in this case, and they should be acquitted.

IV.

In this case it is not shown by direct evidence that the conspiracy charged was actually entered into. The government relies on the proof of circumstances to

show the conspiracy. Such circumstances must convince you beyond a reasonable doubt that there was in fact such a conspiracy. And if you find that such a conspiracy was entered into, you must then consider the testimony to determine, as to each individual defendant, whether he or she was a party to the conspiracy, and if you are not satisfied by proof beyond a reasonable doubt as to any one or more of the defendants, that they were parties to the conspiracy, it is your duty to acquit such defendant or defendants.

V.

The court charges you that the mere presence of an accused at a place or places where overt acts were being committed in aid of the conspiracy, coupled with a refusal to interfere, or mere concealment of the crime, or a mere knowledge that the crime was being committed, or a mental approbation of what was being done while the will contributed nothing in the doing, would not be sufficient, without more, to justify you in finding that a particular defendant was a party to the conspiracy. Such acts on the part of a defendant would be circumstances to be considered in determining whether any particular defendant was a party to the conspiracy, but standing alone, they would not be sufficient evidence of guilt to justify a conviction.

VI.

In connection with the testimony as to the activity or inactivity of Sheriff Weniger and his deputy, Bloom,

as bearing on their guilt or innocence as conspirators, the court charges you that since March 26, 1927, it has been the law of the State of Idaho that said officers have no authority to make searches in homes or other places in which intoxicating liquors might have been kept for sale without a search warrant issued on sworn evidence of a positive character. A search warrant issued on information and belief, or based on conclusions rather than facts, gives no authority for such a search. The court charges you further, as bearing on the activity or inactivity of said defendants, that it is your duty to consider under the evidence whether the sheriff was furnished by the County Commissioners of Shoshone County with a sufficient force of deputies or with a fund to make possible on his part activity greater than the evidence shows to have been exerted by him in enforcing the prohibition laws of the state.

VII.

The court charges you that the fact that many persons in a community or in a neighborhood are engaged in violating the law is not evidence of a conspiracy on their part to violate the law. There must have been a meeting of the minds of such persons in an agreement to so violate the law in which each person was to do something more than to himself violate the law. Any number of separate violations of the law, without such an agreement, does not constitute a conspiracy.

VIII.

The court charges you that in order to constitute a

conspiracy to violate the federal prohibition laws, there must have been "a serious and substantially continued group scheme for co-operative breaking of such laws". Such conspiracies are most difficult to try without prejudice to innocent defendants, and testimony should be carefully scanned by the jury in alleged conspiracy cases to determine whether the acts proven show simply individual action without concert, or whether it shows "a serious and substantially continued group scheme for co-operative law breaking."

1-A

There are two methods of proving the existence of a conspiracy—one by direct proof of the agreement which constitutes the conspiracy; the other by circumstances which may be sufficient to satisfy the jury that such conspiracy was actually entered into. These circumstances must convince you beyond a reasonable doubt that there was in fact such a conspiracy as is charged in the indictment. The evidence must also satisfy you beyond a reasonable doubt that the defendants Weniger and Bloom were parties to that conspiracy in order to justify you in finding that the latter were guilty. Juries are not permitted to convict persons of crime on speculation or probabilities. The evidence must satisfy them of guilt beyond a reasonable doubt.

2-A

The parties are upon trial for conspiracy to possess,

to transport, to sell and to manufacture intoxicating liquors, containing more than one half of one per cent. alcohol by volume fit for beverage purposes, to-wit, wine, beer and whiskey, in violation of Section 3, Section 25 and Section 26 of the Act of Congress of October 28th, 1919, in the Village of Mullan, County of Shoshone, State of Idaho, and to maintain in said Village of Mullan, State, County and District aforesaid, a large number of common nuisances, to-wit, rooms, houses, buildings, structures and places where intoxicating liquors containing more than one half of one per cent. of alcohol by volume and fit for beverage purposes, to-wit, beer, wine and whiskey, were to be manufactured, sold, kept for sale and bartered for beverage purposes, in violation of Section 21, Title II of the aforesaid act of Congress. You will first inquire whether such a conspiracy was in fact entered into by the defendants, or any two or more of them. The fact that infractions of the prohibition laws were general or public and notorious in the Village of Mullan is not sufficient standing alone, to show the conspiracy charged, a mere toleration of criminal acts, or a mental approbation of what is being done while the will contributed nothing to the doing, is not sufficient proof of conspiracy to do the criminal acts. There must be proof of an agreement to do the acts alleged by concerted action of the conspirators. If you find that such a conspiracy was entered into, you will next inquire whether the defendants Weniger and Bloom were parties to the conspiracy, and I again

charge you that mere toleration on the part of said defendants, or even mental approbation on their part of what was being done by others in the execution of such a conspiracy, while their will contributed nothing to the conspiracy, is not of sufficient standing alone to show they were parties to the conspiracy.

3-A

The government affirms the formation and existence of a conspiracy to commit the particular offense charged against the United States, and that these defendants were each a party to such conspiracy. The burden is therefore upon the government to prove what it thus affirms by legal and competent evidence, in order to ask a verdict in its favor.

4-A

Statements of some of the accused conspirators, in the absence of the defendants, and some of them on trial, and conversations with some of the witnesses on the part of persons accused as co-conspirators other than the defendants, made in the absence of the defendants, have been given in evidence. These statements were admitted to show the nature and purpose, the plan and operations, of the conspiracy, if one existed, and to aid in shedding light upon the relation of the persons so speaking to the transactions; but guilt cannot be fastened upon any person by the declarations or statements, oral or written, by others. Guilt must originate within a man's own heart, and it must be

established by his own acts, conduct, or admission. To establish the connection of anyone of the defendants with the conspiracy, such connection must be shown by facts and circumstances or by his own acts, conduct, or declarations, independent of the declarations of others, and, until this fact is thus established, he is not bound by the declarations or statements of others.

The principle of law and rule of evidence is that, when once a conspiracy or combination is established and the defendant's connection therewith is shown by independent evidence, then he is bound by the acts, declarations, and statements of his co-conspirators, because in that event he is deemed to assent to or command what is done by any other in furtherance of the common object. In this case, in determining whether any one of the defendants on trial was a party to the conspiracy, if you find a conspiracy was formed, you cannot consider the declarations and statements made by other persons to the various entrymen or others in the absence of such defendant, as such defendant is not bound by or affected by such statements and declarations of others, until it is shown by other competent evidence that he was a party to such unlawful conspiracy.

5-A

In considering whether or not Weniger and Bloom were parties to the conspiracy or agreement, if you find there was one, you are only to take into consideration their own statements, action, and conduct, and their

own connection with the action and conduct of others, as shown by the evidence, independence of any statements or declarations by others; and unless you find from such evidence that they were parties to such conspiracy, if one existed, then it would be your duty to acquit them. If, however, you find they were parties to such conspiracy, then the statements and declarations of their co-conspirators may be considered as if made by them.

1-B

In every criminal prosecution and in this prosecution the defendants and each of them are presumed to be innocent of the crime charged. This is not a mere idle presumption to be disregarded by you, but is a part of the law of the land. It attaches to the defendants and each of them at all stages of the case, goes with you into the jury room and remains with you and is binding upon your conscience until you can say on your oaths as jurors that said presumption has been removed by the evidence in the case, and you are satisfied from the evidence in the case of the guilt of the defendants beyond a reasonable doubt, and if said presumption is not so removed, and if you have a reasonable doubt as to the guilt of the defendants, or either of them, then it is your duty to resolve that doubt in their favor, and find the defendants not guilty.

2-B

The accused are competent witnesses for themselves in this case under the laws of the United States. Their

credibility may be affected by their interest in securing an acquittal, but aside from that fact, they stand on the same footing as any other witness in this case in the matter of credibility. Their manner and demeanor in testifying, their apparent prejudice or bias, their fairness and consistency in testifying, and their interest in testifying, are all factors proper to be considered in weighing the credibility of their testimony, to the same extent as the same factors are to be considered in weighing the testimony of any other witness. And after weighing the testimony of the accused in the manner stated you believe him to be more credible, better entitled to be believed than the witness or witnesses for the prosecution, then if the conflict in the testimony be as to a material matter in the case, you are entitled to believe the accused in preference to the prosecuting witnesses, and may found your verdict on such belief.

3-B

The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence, proving their guilt beyond a reasonable doubt.

4-B

Proof of good character is a species of testimony admissible as bearing on the guilt or innocence of one ac-

cused of crime, and it may, in connection with all the testimony in the case, be sufficient to raise a doubt in your minds of the guilt of the accused.

Service by receipt of copy acknowledged this 17th day of February, 1930.

SAM S. GRIFFIN,

Asst. U. S. Atty.

Inasmuch as the rulings and exceptions specified in the foregoing bill do not appear in the record of said cause, I, J. Stanley Webster, Judge of the said court, who presided at the trial thereof, after due notice given to the plaintiff herein, have settled and signed the said bill, and have ordered that the same be made a part of the record of the said cause, this 5th day of May, 1930.

J. STANLEY WEBSTER,

Judge.

(Title of Court and Cause)

Filed May 7, 1930

UNITED STATES OF AMERICA,)
STATE OF WASHINGTON) ss.
County of Spokane.)

R. W. NUZUM, being first duly sworn on oath deposes and says: That he is of counsel for the above named defendants; that the Bill of Exceptions has this 5th day of May, 1930, been settled, and it is therefore impossible for the Clerk of the above court to get the record to the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California prior to the 20th day of June, 1930.

This affidavit is made on behalf of defendants, R. E. Weniger and Charles Bloom, to the end that the order may be made enlarging the time to file said record.

R. W. NUZUM,

Subscribed and Sworn to before me this 5th day of May, 1930.

(SEAL)

F. E. COFFEEN,
Notary Public for the State of
Washington, residing at Spokane,
Washington.

Service Accepted May 7, 1930.

W. H. LANGROISE.

(Title of Court and Cause)

ORDER ENLARGING TIME TO FILE
RECORD

Filed May 7, 1930

It appearing to the court from the affidavit of R. W. Nuzum herein that the Bill of Exceptions will be settled this 5th day of May, 1930, and that it is impossible to get the record into the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California prior to the 20th of June, 1930;

NOW, on motion of counsel for R. E. Weniger and Charles Bloom, defendants:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the court that the time within which said citation, records, files and proceedings herein may be filed in the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be and the same is hereby enlarged to and including the 20th day of June, 1930.

Done in open Court this 5th day of May, 1930.

J. STANLEY WEBSTER,

Judge.

Service Accepted

May 7, 1930.

W. H. LANGROISE.

(Title of Court and Cause)

Filed May 7, 1930

On motion of the defendants, R. E. Weniger and Charles Bloom:

IT IS HEREBY ORDERED that the Clerk of the District Court of the United States in and for the District of Idaho, Northern Division, forward to the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, as a portion of the record in this case Exhibits No. 8, No. 9, No. 15, No. 16 and No. 19.

Done in open Court this 5th day of May, 1930.

J. STANLEY WEBSTER,

Judge.

Service Accepted

May 7, 1930.

W. H. LANGROISE.

(Title of Court and Cause)

SECOND SUPPLEMENTAL PRAECIPE
FOR TRANSCRIPT

Filed May 7, 1930

To W. D. McReynolds, Clerk of the above entitled court:

Please prepare and certify to the Circuit Court of Appeals of the Ninth Judicial Circuit, the following

papers and records in the above cause:

1. Notice of presenting Bill of Exceptions.
2. Application of Plaintiff for Extension of Time to file Amendments to Bill of Exceptions.
3. Order allowing extension of time to April 15, 1930.
4. Order of April 15, 1930 adjourning term to May 5, 1930.
5. Motion to strike from Bill of Exceptions.
6. Order denying motion to strike from Bill of Exceptions.
7. Order to forward Exhibits.
8. Affidavit of R. W. Nuzum for extension of time to file record.
9. Order enlarging time to file record to June 20, 1930.

TURNER, NUZUM & NUZUM
605 Columbia Building, Spokane
Washington.

O. J. BANDELIN,
Sandpoint, Idaho

Attorneys for Defendants
Weniger and Bloom

(Title of Court and Cause)

CLERK'S CERTIFICATE

I, W. D. McREYNOLDS, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered 1 to 809, inclusive, to be full, true, and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipes filed herein.

I further certify that the cost of the record herein amounts to the sum of \$1003.90, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 16th day of June, 1930.

W. D. McREYNOLDS, Clerk.

(SEAL)

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT. ³

R. E. WENIGER and CHARLES
BLOOM,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

No. 6168

BRIEF OF APPELLANTS.

*On Appeal from the District Court of the United
States for the District of Idaho.
Northern Division.*

TURNER, NUZUM & NUZUM,
Spokane, Washington,

O. J. BANDELIN,
Sandpoint, Idaho,

Counsel for Appellants.

IN THE
United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

R. E. WENIGER and CHARLES BLOOM,	}	No.....
<i>Appellants,</i>		
<i>v.</i>		
UNITED STATES OF AMERICA,	}	
<i>Appellee.</i>		

BRIEF OF APPELLANTS.

*On Appeal from the District Court of the United
States for the District of Idaho.
Northern Division.*

TURNER, NUZUM & NUZUM,
Spokane, Washington,

O. J. BANDELIN,
Sandpoint, Idaho,

Counsel for Appellants.

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STATEMENT

This prosecution was founded on an official act of the council of the village of Mullan, in the county of Idaho, one of the legislative and administrative agencies of Idaho.

Mullan is a town of about three thousand people, adjacent to the great Morning Mine, which employs about one thousand miners. The miners and their families constitute the town of Mullan. The council of the village appears to have exercised both legislative and administrative functions.

In February, 1924, being in debt about eight thousand dollars, and needing money for adequate policing and for streets, bridges and other municipal purposes, the village of Mullan, by and through its councilmen, passed a licensing ordinance, No. 105, prescribing the businesses subject to license, and the amount to be paid by each licensee. (Bill of Exceptions pp. 307 to 317, both inclusive). The businesses to be licensed and the rate of the licenses were as follows: Billiard rooms, pool halls or bowling alleys, \$3.00 a quarter, and for each billiard table, pool table or alley, \$1.00 per quarter; Soft drink parlors were to pay \$25.00 per month; Soda or ice cream stands \$1.00 per year; Theaters or picture houses, \$15.00 per quarter; Min-

strels, legerdemain, carnivals or conducting any fortune-telling or business not otherwise provided for, \$5.00 for each single performance; for any circus or menagerie, including sideshows, \$50.00 per day; for conducting variety or concert theaters, \$15.00 per day; for merry-go-rounds, \$25.00 per day; for shooting galleries, or doll racks or cane racks, \$5.00 per day or \$25.00 per quarter; public garage, \$16.00 per year, public merchant, hawker or peddler who carries a pack, \$5.00 per day, if traveling on foot; conducting a gas or electric plant, \$10.00 per quarter; conducting water works or plumbing store, or both, \$10.00 per quarter; conducting telephone business, \$5.00 per quarter; conducting motor bus or car for hire, \$3.00 per quarter; conducting hotel or lodging house, restaurant or public eating place, \$3.00 per quarter; conducting laundry business, \$3.00 per quarter; conducting roller or skating rink, \$10.00 per month; for selling goods, wares and merchandise, drugs or medicines, jewelry or wares of precious metals, etc., \$1.50 per quarter. Then followed penal provisions to enforce payment of licenses, as provided to be paid by the licensees.

The passage of this ordinance was one of the overt acts laid in the indictment.

This ordinance not producing sufficient funds for the needs of the village, an appeal was made later to the public to contribute money for that purpose, which appeal was couched in the following language:

“Mullan, Idaho, May 1, 1927.

TO WHOM IT MAY CONCERN:

WHEREAS, The assessed valuation of the village of Mullan, County of Shoshone, Idaho, is \$400,123.00, and a levy of Fifteen (15) Mills, which is the maximum levy permitted by law to be made by the Trustees of said village for general revenue purposes, will produce approximately but \$6000.00; and,

WHEREAS, It requires considerably more than that sum to conduct said Village Government and maintain the Streets, Bridges and Sewers therein;

THEREFORE, The undersigned residents of said Village of Mullan, in order to assist in the maintenance of said Village government hereby Voluntarily contribute to the General Fund of said Village, the sums set opposite their respective names:”

These printed appeals were taken by the chief of police and citizens and people engaged in the various businesses contributed. A similar appeal was made for each month thereafter until October, 1928, when such appeals were discontinued, (Trans. pp. 199 to 232, both inclusive).

The practice prevailed in the village of the chief

of police collecting under the licenses and under the appeals until no very clear line of demarcation existed, the chief collecting under the license ordinance or under the appeal indiscriminately, and turning the money over to the city when collected. Under one or the other method, monies were collected from legitimate businesses as well as from gambling houses, houses of prostitution and from the illicit sale of intoxicating liquor.

All the individuals who sold intoxicating liquor in Mullan, the councilmen and other officials of the village of Mullan, and the sheriff of the county and his deputy, Bloom, were united in the indictment for conspiracy, and all were convicted. All the principal officials except the plaintiffs in error, Sheriff Weniger and Deputy Bloom, accepted the sentence imposed on them, and are now in the penitentiary at McNeil Island serving out their sentences.

There was no evidence to indicate, indeed the contrary was admitted by the government, that any of the members of the village council, or any of its under officials, including the police, or the sheriff or his deputy, Bloom, profited in any manner, shape or form from the practice pursued in carrying out the license ordinance.

There was no evidence that the village of Mullan or any of its officials promised immunity to any of the persons paying license and engaged in the liquor business, or that the latter were offered protection from arrest or punishment under the laws of the United States, or even under the laws of the State of Idaho. If immunity from prosecution under the laws of the state might be implied from the course of conduct pursued, it could not be implied as to immunity from arrest and punishment under the laws of the United States. There is no testimony of any character indicating the latter to have been the fact.

There was no evidence that any of the wretched creatures engaged in gambling, prostitution or in the selling of liquor in the village knew or that they were in fact engaged in a common conspiracy with the other defendants to violate the laws of the United States. Each knew that he or she was licensed to conduct some innocent business, such as a lodging house or soft drink parlor or hotel, or some other occupation, and that the license was a prerequisite to the carrying on of their illicit business. So far as they were concerned, there was no concert of action. Each man or woman was acting for himself or herself alone. There was, we believe, an entire absence of testimony showing "a serious and substantially

continued group scheme for cooperative law breaking.” Yet they were all convicted, as always happens when a large number of persons are united in one indictment for conspiracy, all being under the finger of suspicion, and the very lightest implication being taken as sufficient to involve them in the conspiracy charged. This is especially true where the trial judge does not, by proper instructions, make plain to the jury their duty in the premises. This was not done in this case, except in a superficial manner, and special instructions asked on the subject were denied by the court.

As to the plaintiffs in error here, Sheriff Weniger and Deputy Bloom, there is no evidence worthy the name that they were parties to the conspiracy charged. This statement we will substantiate in the body of our brief.

The case was hurriedly tried by Judge Webster, probably because of the large number of defendants and the very considerable time necessarily to be taken in conducting the trial, and also probably because his honor, Judge Webster, had tried a number of such cases and was very familiar with the law. Objections to testimony, except in one or two instances, were decided offhand and without hearing from counsel. Even the motions to discharge the defendants, Weniger and Bloom, after the governments’ testimony

was concluded, and for a directed verdict at the end of all the testimony, were denied without argument, although the opportunity to present argument was requested. This manner of conducting a case was almost equivalent, if not entirely so, to a denial of the right to be heard. Its influence on the jury was devastating. Counsel for defendants were discredited, and the atmosphere of the courtroom was so dense in favor of conviction that the efforts of counsel to present the salient features of the case and impress on the minds of the jury the cardinal rules relating to prosecutions for conspiracy, were futile and of no avail.

While we have felt it our duty to make these observations concerning the trial, we have the very highest respect for Judge Webster as an able and impartial judge. Judge Webster was familiar with the case of *Allen et al. v. United States*, 4 Fed. (2nd Series) 688, a case having many of the features of this case, and he had applied that case in a number of conspiracy cases tried by him. He felt that he did not need the assistance of counsel in his rulings. He undoubtedly failed to consider the sinister effect of that manner of conducting the case on the rights of the defendants being prosecuted.

We do not have the respect for the Allen case

that Judge Webster has, and would have liked to have presented some considerations bearing on the guilt or innocence of the defendants, which the judge considered foreclosed by that case. We would have liked the opportunity to discuss that case in its bearings on the case being tried, but having been denied the opportunity below, we will take the opportunity to do so in this court, in its proper place.

We will now proceed to the specific errors assigned.

ARGUMENT

We desire in the beginning to present an objection to this prosecution, which, if valid, is fatal to its maintenance. All the testimony in the case goes back to the passage of the ordinance No. 105, by the council of the village of Mullan. That ordinance will be found on pages 307 to 317 of the Transcript. The entire testimony revolved around that official act. It relates to the different persons accepting the benefit of said ordinance, paying the rates therein fixed, and doing an illicit liquor business thereunder, mixed up indiscriminately with testimony of payments for running gambling houses and houses of prostitution. It would be a work of supererogation to cite the pages of the testimony. It runs through the entire case. The testimony against the plaintiffs in error herein was

directed to connecting them with that conspiracy.

We understand that we are entitled to except to the jurisdiction of the court to entertain such prosecution at any time and in any court. See *Linder v. United States*, 268 U. S. 5; 69 L. Ed. 819, where the Supreme Court granted certiorari to this court and reversed the judgment of this court on jurisdictional grounds, although no objection had been taken to the jurisdiction below, either in this court or in the District Court.

However, we believe the specification of error 145 and 146 Transcript pages 129-130, sufficient to cover the proposition we are now advancing. Also Assignment of Error No. 20, which relates specifically to the objection to the introduction of the evidence in question on the grounds which we are now urging. (Trans. p. 77).

Our contention is that the United States cannot found a criminal prosecution in whole or in part on an official act of a state, or any instrumentality of a state, and that where that is attempted the federal court in which such prosecution is brought is without jurisdiction to proceed.

The government of the United States and the

governments of the several states are each supreme within the limits of their respective powers, but where their powers come into conflict, those of the general government must prevail. But powers belonging to the states cannot be controlled by criminal prosecution even in aid of some federal power. The United States cannot affirmatively control the executive or legislative branch of the state government, or interfere with the administration of the function of the state government through its inferior instrumentalities. It may inquire into the acts of such inferior instrumentalities or into the validity of legislative or executive acts and pronounce on their validity, when they are alleged to come in conflict with federal, statutory or constitutional provisions, in a case made between private parties and properly brought in a federal court, or by error to a state court where such questions are decided in such court. This results from the superiority of the federal constitution, and is permissible because it does not directly impeach or interfere with the administrative functions of the state.

But it cannot undertake to regulate or control or to impeach the officers of the state, legislative, executive or judicial, in the performance of their duties, so as to make them liable to the criminal laws of

the United States, for action or inaction within the scope of their duties.

This question arose early in the history of the nation, in relation to the attempts of the states to tax instrumentalities of the national government. That power was denied in *McCulloch v. Maryland*, 4th Wheaten, 316; *Weston v. Charleston*, 2nd Peters, 449; *Osborne v. Bank of the United States*, 9th Wheaten, 738, in all of which cases the attempt was made by states to tax securities issued by the United States, or to tax the Bank of the United States chartered by congress.

Such action on the part of the states was declared invalid because it constituted an interference with the instrumentalities of the national government. We do not quote from these cases because later cases in which the same principles were declared are more clearly apposite.

In the case of *Collector v. Day*, 11 Wallace, 113, the same principle was applied in favor of the states in a case in which the government of the United States undertook to tax salaries of judicial officers of the state. Mr. Justice Nelson, in the majority opinion handed down, thus states the doctrine laid down in that and former cases, and which has been followed

ever since where attempts of either sovereignty have been made to tamper with or interfere with the governmental instrumentalities of the other.

“It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the State governments by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely: ‘The powers not delegated to the United States are reserved to the States respectively, or, to the people.’ The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, ‘reserved,’ are as independent of the general government as that government within its sphere is independent of the States.

Two of the great departments of the government, the executive and legislative, depend upon the exercise of the powers, or upon the people of the States. The Constitution guarantees to the States a republican form of government, and

protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence. A despotic government might * * *.

The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained. The two governments are upon an equality, and the question is whether the power 'to lay and collect taxes' enables the general government to tax the salary of a judicial officer of the State, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the

laws, and which concerns the exercise of a right reserved to the States? * * *

And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are necessarily, and, for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?

Chief Justice Chase, in *Lane County v. Oregon*, 7th Wallace, 71, thus states the nature of the relation between the states and the nation:

“The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could

be no such political body as the United States.

Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the Confederate government, which acted with powers, greatly restricted, only upon the States. But in many articles of the Constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in the *Federalist*, thus: 'The Federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes.' "

Another case to which we call attention is the *Tarbles case*, 13 Wallace 397. In that case the courts of the State of Wisconsin had undertaken, under the process of habeas corpus, to release from the custody of a recruiting officer an enlisted soldier on the ground that he was a minor under the age of eighteen years. Writ of error to the Supreme Court of Wisconsin issued, and the judgment of the State court releasing the enlisted soldier was reversed. In the course of the opinion by Mr. Justice Field, the rela-

tion between the national government and the respective state governments was thus described:

“It is in the consideration of this distinct and independent character of the government of the United States, from that of the government of the several states that the solution of the question presented in this case, and in similar cases, must be found. There are within the territorial limits of each State two governments, restricted in their spheres of action, but independent of each other, and supreme within their respective spheres. Each has its separate departments; each has its distinct laws, and each has its own tribunals for their enforcement. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other. The two governments in each State stand in their respective spheres of action in the same independent relation to each other, except in one particular, that they would if their authority embraced distinct territories. That particular consists in the supremacy of the authority of the United States when any conflict arises between the two governments. The Constitution and the laws passed in pursuance of it, are declared by the Constitution itself to be the supreme law of the land, and the judges of every State are bound thereby, ‘anything in the constitution or laws of any State to the contrary notwithstanding.’ Whenever, therefore, any conflict arises between the enactment of the two sovereignties, or in the enforcement of their asserted authorities, those of the National government must have supremacy until the validity of the different enactments and authorities can be finally determined by the tribunals of the United States. This temporary supremacy until judicial decision by the National tribunals, and the ultimate determina-

tion of the conflict by such decision, are essential to the preservation of order and peace, and the avoidance of forcible collision between the two governments. 'The Constitution,' as said by Mr. Chief Justice Taney, 'was not framed merely to guard the States against danger from abroad, but chiefly to secure union and harmony at home; and to accomplish this end it was deemed necessary, when the Constitution was framed, that many of the rights of sovereignty which the States then possessed should be ceded to the General government; and that in the sphere of action assigned to it, it should be supreme and strong enough to execute its own laws by its own tribunals. without interruption from a State, or from State authorities.' And the judicial power conferred extends to all cases arising under the Constitution, and thus embraces every legislative act of Congress, whether passed in pursuance of it, or in disregard of its provisions. The Constitution is under the view of the tribunals of the United States when any act of Congress is brought before them for consideration.

Such being the distinct and independent character of the two governments, within their respective spheres of action, it follows that neither can intrude with its judicial process into the domain of the other, except so far as such intrusion may be necessary on the part of the National government to preserve its rightful supremacy in cases of conflict of authority. In their laws, and mode of enforcement, neither is responsible to the other. How their respective laws shall be enacted; how they shall be carried into execution; and in what tribunals, or by what officers; and how much discretion, or whether any at all shall be vested in their officers, are matters subject to their own control, and in the regulation of which neither can interfere with the other."

This case followed shortly after that of *Ableman v. Booth*, 27 Howard, p. 506, a case arising out of the fact that courts of Wisconsin had undertaken to release on habeas corpus a fugitive slave in the custody of the United States Marshal under the fugitive slave law of the United States. The judgment of the Supreme Court of the state was reversed (Opinion by C. J. Taney) on the same doctrine laid down by Mr. Justice Field in the *Tarble* case. It is an interesting case and well worth reading, especially in the light of the history of that time, in which the people of the northern states and the judiciary of one of the northern states had set their faces against the enforcement of a law of the United States which they felt transgressed against the law of God, although it might be sufficiently authenticated as the law of man. We do not quote from it, because the doctrine of the relation between the state and federal governments is more perspicuously laid down by Judge Field in the *Tarble* case.

We come now to the later cases:

Boyd v. Thaper, 143 U. S. 182.

This case was a contested election for the office of governor, brought in the state courts of Nebraska, and reaching the Supreme Court of the United States

by writ of error. The Supreme Court held that it had jurisdiction to review the case because of a federal question presented, namely whether Boyd, the elected governor, had been properly naturalized as a citizen of the United States. Mr. Justice Field dissented, and among other things said:

“I dissent from the judgment just rendered. I do not think that this court has any jurisdiction to determine a disputed question as to the right to the governorship of a State, however that question may be decided by its authorities. I agree that the States of the American Union are not in all respects independent political communities; I agree that they do not possess that supreme political authority which would entitle them to be called sovereign States in the full sense of those terms, as they are often designated. They are qualified sovereignties possessing only the powers of an independent political organization which are not ceded to the general government or prohibited to them by the Constitution. But, except as such powers are ceded to the general government or prohibited to them, the States are independent political communities. This is not a matter of argument or inference, but is the express declaration of the Tenth Amendment. As forcibly stated by Mr. Justice Nelson, speaking for this Court, ‘the general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, ‘reserved,’ are as independent of the general government as that gov-

ernment within its sphere is independent of the States.' The *Collector v. Day*, 11 Wall, 113, 124. In no respect is this independence of the States more marked, or more essential to their peace and tranquility than in their absolute power to prescribe the qualifications of all their state officers, from their chief magistrate to the lowest official employed in the administration of their local government; to determine the manner of their election, whether by open or secret ballot, and whether by local bodies or by general suffrage; the tenure by which they shall hold their respective offices; the grounds on which their election may be contested, the tribunals before which such contest shall be made, the manner in which it shall be conducted; and the effect to be given to the decision rendered. With none of these things can the government of the United States interfere. In all these particulars the States, to use the language of Mr. Justice Nelson, are as independent of the general government as that government within its sphere is independent of the States. Its power of interference with the administration of the affairs of the State and the officers through whom they are conducted extends only so far as may be necessary to secure to it a republican form of government, and protect it against invasion, and also against domestic violence on the application of its legislature, or of its executive when that body cannot be convened. Const. Art. IV, Sec. 4. Except as required for these purposes, it can no more interfere with the qualifications, election and installation of the state officers, than a foreign government. And all attempts at interference with them in those respects by the executive, legislative or judicial departments of the general government are in my judgment so many invasions upon the reserved rights of the States and assaults upon their constitutional autonomy."

While the opinion from which we quote is a dissenting opinion, the doctrine that it lays down was not at all questioned by the majority, the opinion of the latter proceeding on the technical doctrine that a law of the United States was called in question and that that gave the Supreme Court jurisdiction on writ of error.

The subsequent case of *Taylor and Marshall v. Beckham*, 178 U. S. 548, explains the ground on which the decision in *Boyd v. Thayer* proceeded, and again states the general doctrine of the inviolability of the state and its officials in all matters not committed to the general government by the federal constitution.

“The facts would have to be most rare and exceptional which would give rise in a case of this nature to a Federal question * * *. In its internal administration the State (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the persons filling the office. And in such matters the decision of the state court, that the procedure by which an officer has been suspended or removed from office was regular and was under a constitutional and valid statute, must generally be conclusive in this court * * *. Upon the case made by the plaintiff in error, the Federal question which he attempts to raise is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the Federal Constitution have been

violated, either by depriving him of his property without due process of law or by denying him the equal protection of the laws."

It was said by Mr. Justice Field in the *Tarble* case:

"Such being the independent and distinct character of the two governments within their respective spheres of action, it follows that neither can intrude with its judicial process into the domain of the other except so far as such intrusion may be necessary on the part of the national government to preserve its rightful supremacy."

So far as the cases indicate, that power of intrusion on the part of the national government has never been exercised except by the revisory power of the Supreme Court through error to the inferior federal courts or error to or appeal from the supreme courts of the several states. It would be subsversive of all harmonious action between the two sovereignties if either could enforce its rightful supremacy against the other by criminal proceeding. If the national government may go to that extent to enforce its supremacy, then there is no limit to the state instrumentalities which it may so pursue. The governor and legislature of a state may be indicted for conspiracy to violate the Volstead Act by the passage of an act by the legislature and governor which repeals all liquor enforcement provisions, and provides for a licensing act, innocent on its face, under which illicit sales of liquor are made.

That, of course, would be an extreme case, but if the power to enforce the 18th Amendment and the Volstead Act by criminal prosecution against any instrumentality of the state, however modest in character, be sustained, then the same method of enforcing the 18th Amendment and the Volstead Act must be open to the government as to any instrumentality of the state, however high its character.

Conversely, if it be thought that a village council is an instrumentality too insignificant to be entitled to the protection of the principal in question, it should be remembered that the federal instrumentality interfered with in *Ableman v. Booth*, was a marshal of the United States. That interfered with in Tarbles case was a recruiting sergeant of the United States Army.

Quite a number of states have already repealed their enforcement acts and thereby declined to aid the government in the enforcement of the Volstead Act, and have no doubt thereby much impaired the ability of the nation to enforce the Act. The governor and members of the legislature of those states would be guilty of conspiracy, under the theory on which Judge Webster tried this case, namely that such officials are guilty of conspiracy to violate the Volstead Act if they do no more than refuse to make and en-

force state laws on the subject. Governor Smith of New York and the member of the legislature of that state under that theory would all be in the penitentiary now, if the nation had enforced against them its power to maintain the supremacy of the Volstead Act by criminal proceedings. Much more does not need to be said on this particular phase of the question.

There is one other phase to which we must advert before closing this discussion. It appears that collections were made by the chief of police under both the licensing ordinance and under appeal to the public for subscriptions. Nothing definite was shown on the subject. It is a fact which must be accepted as clearly established that some, and probably most, of the collections made were for licenses issued by the clerk of the village. (See testimony of Clerk of the village of Mullan, *Trans.* pp. 345-346.) We respectfully submit that if any of the collections were made under the licensing ordinance and those collections were relied on by the government in the prosecutions below, then, in view of the difficulty of segregating the collections and assigning to each kind of collection the influence it may have had on the jury in reaching its verdict, it was at least a clear reversible error to receive evidence of collections under the ordinance. The ordinance was passed on the 4th day of February, 1924

(Trans. p. 317). The first appeal to the public was made some time thereafter. Thus there was a period during which all collections must have been made under the ordinance. The latter is set out in the indictment as one of the overt acts. The conspiracy must then have been in existence, and who can say what the influence of the action of the council of the village during that period was on the verdict of the jury? And lastly the collections under the appeal, as well as under the ordinance, were reported to the council of the village in official session each month by the collecting official, and received by the council.

“I collected from the different ones. Some objected to paying the full amount, that their business did not justify it, and I took any amount of money what was offered, and I turned that money into Mr. Martin, the Village Clerk. He made a copy of the names and amounts at the end of each month, and summed it up together, and gave a copy to each of the trustees at the first meeting of the next month, so they had a list of every name I collected from except a few marked cash.”

(Testimony of Chief of Police Needham, Trans. p. 193).

“I never discussed what the purpose of collecting the money was. I never discussed selling liquor.”

(Tes. Needham, Trans. p. 242.)

“With reference to the licenses, the clerk issued

them once a month and placed in my hands to collect. As to donations collected, the clerk had no record of them until I turned them in to him.”

(Trans. p. 238.)

If it may be thought that the reception of the money paid in response to the appeal to the public generally would be sufficient to constitute a conspiracy innocuous to the objection we are now making, then certainly the reception of the ordinance was clear error. The reception of that ordinance in evidence was objected to on the specific ground here being advanced.

(Assignment of Error No. 20, Trans. p. 77.)

Assignments of Error Numbers 5, 6, 7, 8, 9, 106, 107, 109, 110, 111, 112, 125, 126, 130, 133, 134, 135 and 136.

These assignments all relate to the testimony permitted to be introduced over defendants' objection and exception, relating to collections under the appeal or under the license ordinance from persons engaged in gambling and in conducting houses of prostitution. Twenty-two of these written appeals, and the names of persons subscribing thereto, were introduced in evidence (Trans. pp. 198 to 232, both inclusive), and the occupation of person subscribing, whether doing a legitimate business, or whether engaged in liquor

selling, or in gambling, or in prostitution, was brought out by the district attorney in extenso. That line of testimony was permitted throughout the entire case and in the cross examination of the defendant, Bloom, the last witness for the defense, it was pursued to the extreme.

We assume that it is not necessary to cite authorities to the proposition that testimony as to gambling and prostitution was incompetent, irrelevant and immaterial, and that it was highly prejudicial. The only matter necessary to be discussed is whether his honor, Judge Webster, gave any valid reason for his rulings in his instructions to the jury as follows:

“The testimony in this case with respect to gambling and prostitution in the village of Mullan was admitted because it was so interwoven with the charge of violating the laws of the United States, namely the prohibition laws, that it was competent for you to take it into consideration in connection with all the other facts and circumstances disclosed by the evidence in the case as a shedding light on the question of whether there was a conspiracy to violate the prohibition laws, if in your judgment such evidence has any such effect.”

Gambling and prostitution were not interwoven with the charge of violating the laws of the United States made in the indictment. Neither were mentioned in the indictment. Neither ever need have been heard of by

the jury but for the affirmative act of the district attorney in dinning, gambling and prostitution into the ears of the jury with the permission of the court. It was perfectly feasible for the government to have made its case on a conspiracy to violate the Volstead Act, without ever mentioning gambling or prostitution. That feature was foisted into the case for its prejudicial effect on the jury.

Did such testimony shed any light on the question of whether there was a conspiracy to violate the prohibition laws, as suggested by the court in its charge to the jury? We say not.

The judge further enlarged the effect of the testimony as to gambling and prostitution by saying to the jury:

“If in your judgment any such evidence has any such effect,”

We submit that it was the duty of the judge, and not of the jury, to determine what the effect of such testimony was, and when he submitted the testimony to the jury on the untenable theory that it was so interwoven with the conspiracy to violate the liquor laws that it could not be separated, and then permitted the jury to determine whether it should have any effect on their verdict, the maximum of injury

from the reception of incompetent and prejudicial testimony was inflicted.

That the purpose of the testimony was intended to prejudice the defendants was made manifest in the cross examination of the plaintiff in error, Bloom, by the district attorney. The defendant Bloom had testified in response to the questions of the district attorney that "there were pool tables in the middle room of the Bilberg," and that he saw card playing, but did not know what game they were playing. We now give the balance of the cross examination on the subject of gambling:

“Q. What were they playing?”

A. Well, I don't know that.

MR. NUZUM: Wait a minute, Bloom. I object as incompetent, irrelevant and immaterial as to any card-playing in the Bilberg.'

THE COURT: Objection overruled.

MR. NUZUM: Exception.

A. I did not stop long enough to find out what game they were playing.

Q. You did not want to know, did you?

MR. NUZUM: Just a moment, I object, your Honor please, as improper cross examination.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

A. Well, I didn't say that I did not want to know. I did not really think about what they were playing or not.

MR. LANGROISE: Q. Weren't you interested as an officer of the law?

MR. NUZUM: I object as immaterial and in-

competent.

THE COURT: Overruled.

A. Interested, yes, I suppose I was interested.

MR. LANGROISE: Q. You had taken an oath to enforce the laws of this county, had you not?

A. Yes sir.

Q. And there is a law against gambling, isn't there?

MR. NUZUM: I object as incompetent and immaterial, anything about gambling.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

A. Well, I don't know whether it was gambling or not.

MR. LANGROISE: Q. You did not try to find out either, did you, Mr. Bloom?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: The objection is overruled.

A. I saw the cards and the chips on the tables and they were playing.

MR. LANGROISE: Q. And you did not try to find out, did you, what they were playing?

MR. NUZUM: The same objection.

THE COURT: Overruled.

A. I don't know that I did.

MR. LANGROISE: Q. You had never heard any reports that they were gambling at the Bilberg, did you?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I heard they were playing cards there.

MR. LANGROISE: Q. Did you have any information or any reports come to you that they were gambling?

A. No.

Q. Never during all the time that you lived in Mullan?

A. No complaint, no.

Q. And you never heard any rumor that they were gambling at the Bilberg?

MR. NUZUM: I object as incompetent and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. I heard they were playing cards, that is all. I don't know whether it was gambling or not. By playing cards I mean people sit down around the table and play a game of cards of any kind.

Q. What did you hear about it?

MR. NUZUM: I object as immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

* * *

Q. You never heard of any gambling going on up in the Central Hotel Bar?

A. No sir.

MR. NUZUM: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

A. Did you ever make any inquiry as to whether or not there was any gambling going on?

MR. NUZUM: I object to that as immaterial, whether he made any inquiry or not.

THE COURT: Overruled.

* * *

Q. Did you ask them whether or not there was any gambling in there?

MR. NUZUM: I object to that as immaterial, whether or not there was any gambling.

THE COURT: Overruled.

A. I didn't.

Q. Were you interested in whether or not there was any gambling there?

A. I was.

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled.

Q. Why didn't you ask about it then?

MR. NUZUM: I object to that as immaterial.

THE COURT: Overruled."

Further comment on the action of the court is not necessary. It may be said that the exceptions taken to the reception of this testimony was by counsel other than counsel for the present plaintiffs in error. That, however, is not true as to the exception taken on the cross examination of Deputy Bloom. Moreover, early in the case, because of the multiplicity of counsel, the court, on request of Mr. Nuzum for an exception on behalf of Bloom and Weniger to the ruling of the court, made this pronouncement:

"MR. NUZUM: May we have an exception?

THE COURT: Yes sir. I think it may be understood now so far as this court is concerned, that each counsel may consider it understood that the exception is reserved and allowed to all adverse rulings."

Assignments of Error No. 13, 14, 15 and 16.

These assignments relate to the testimony of the witness, McGill, to the effect that the defendant, Bloom, was at Mullan on election day, 1928, and that the witness put at his disposal an automobile to be used in that election.

The idea of the district attorney no doubt was that such testimony would tend to show an attempt to control the election by the defendants, Bloom and Weniger, in aid of the alleged conspiracy.

We insert the testimony admitted:

“Q. What, if anything did you do concerning the election on that day, Mr. McGill?”

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

MR. RAY: I think I shall bring it out directly as touching the officials of Shoshone County, your Honor.

MR. RAY: By that I mean the Sheriff’s Office.

MR. NUZUM: I think that is immaterial.

THE COURT: The question is pretty broad, what he did on election day.

MR. RAY: Very well, your Honor.

Q. Did you supply an automobile—strike that. Did you have any conversation with Mr. Bloom on that day relative to your work?

A. Yes sir.

Q. And where was that?

A. Why, a few days later—in Mullan Inn.

Q. And when was this talk with Mr. Bloom?

A. It was a few days after election.

THE COURT: In 1928?

A. Yes sir.

MR. RAY: Very well, now then, go ahead and state.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

A. Why, he just said that we had things our way again, we had Weniger in, and things were

going along pretty good, and he thanked me for what I had done.

MR. RAY: What had you done?

MR. NUZUM: I object as immaterial what he had done in election.

THE COURT: What he had done in connection with Bloom he may state.

A. I just donated my car to the boys for service to help them out.

MR. NUZUM: Now if your Honor please, I move to strike that. Bloom was not a candidate for office.

THE COURT: Denied.

MR. NUZUM: Exception.

MR. RAY: Q. Was Mr. Bloom present on election day at Mullan?

A. Yes sir.

Q. Did he have anything to do with the use of your car.

A. Yes sir.

MR. NUZUM: All of this with reference to election goes in under my objection, if your Honor please. I object to it as incompetent, irrelevant and immaterial. It does not make any difference what anybody does with reference to a state election.

THE COURT: The objection is overruled.

MR. NUZUM: Exception.

THE COURT: A conversation had with one of the defendants.

MR. RAY: Q. And did you supply your car?

A. Yes sir.

Q. What, if anything, did you do relative to banners or posters on your car?

MR. NUZUM: Just a minute, I object to that as incompetent, irrelevant and immaterial. That is not a conversation with the defendant.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.

A. I carried a banner on the car to vote for Al Smith in the—

MR. RAY: Q. Who furnished that?

MR. NUZUM: I move to strike that, because Al is not a party to this.

MR. RAY: Just a moment, I can connect this up in just a minute with Mr. Weniger.

MR. NUZUM: As a democrat, I must protect Al.

A. I voted for him myself.

THE COURT: The statement of counsel is that he will connect it. I reserve the ruling. Unless, he does, why the Court also will protect Al."

The testimony was entirely immaterial to any issue in the case. When considered alone, it was not very prejudicial, because Mr. Weniger was up for reelection as sheriff and Bloom was his deputy and therefore interested in his election, but it is impossible to say what impression it made on the jury. The court was very liberal in allowing testimony offered by the district attorney, much of it immaterial, and the constant reiteration of immaterial matters must have made some impression on the mind of the jury.

Assignment of Error No. 17 refers to a question on cross examination of the government's witness, McGill, who had testified to a number of alleged conversations with Mr. Weniger and Mr. Bloom and prejudicial to them. The ruling is shown on page 297 of the Bill of Exceptions, as follows:

“MR. NUZUM: Q. And you have stated to numerous people that you did not care what became of the other people but you wanted to cinch Weniger and Bloom, haven't you?”

MR. RAY: Just a moment, I object to that question.

THE COURT: The objection is sustained.”

The question was a perfectly proper question on cross examination and if the witness had been permitted to answer it, he might have admitted that he had made the statements in question, and if he had done so, it would have much impaired the value of his testimony. The court evidently regarded it as an impeaching question to be followed by proof that he had made the statement asked about. In that case, the time, place and person would have had to be fixed in the question, but it was not an impeaching question. If the witness had denied making the statement, it would not have bound the defendants. Such questions on cross examination are permitted by the courts every day in the year.

Jones on Evidence (2nd Ed.), Sec. 823.

It is error to rule out such questions on cross examination.

People v. Lee Ah Chuch, 66 Cal. 662;

Schultz v. Third Ave. R. R. Co., 89 N. Y. 242;

State v. McFarlain, 6 Southern, 728.

Assignment of Errors from No. 58 to No. 96, both inclusive.

In explanation of these assignments, Cooper and Rogers, prohibition agents, had been in and around Mullan and Wallace from March 30th to June 15th, 1928. They operated under cover in Mullan and Wallace, going into places and buying liquor in both places, and making records of the same for future use.

Mr. Cooper testified that on June 15th, 1928; "I saw Weniger at the hotel. Rogers was with me, and I walked over to the desk and laid the key on the register, and Rogers preceded me to the door. Weniger stepped up and tapped me on the shoulder and said, "I want to speak to you.' So we walked up towards the front door out where Rogers was, and Weniger wanted to know what that fellow (Rogers) was. I said 'He is Rogers,' and he said, 'I want to talk to you fellows about some bad checks that have been passed up in Mullan you fellows answer the description of the fellows wanted for passing these bad checks,' and so Mr. Rogers figured that we were uncovered—

"THE COURT: No."

"A. Rogers said 'That is our identity,' and he opened up his coat and showed his badge to Weniger, and said 'This man is working for me.' Weniger said, 'Let us take a walk over to the

office,' so on the way it was stated by Weniger that he had a right to know everybody that was working in his county and their business. So we proceeded over to the office and went into the office and sat down and Weniger wanted to read Mr. Roger's credentials, so Mr. Rogers showed him a check and government papers and proved to him that he was a federal officer, and Mr. Weniger stated that there were a couple of men in there, detectives, working on those bad checks, and that they were not in at the time but had gone to Mullan and during the time he called in Charlie Bloom, and Charlie stood by the door and listened to the conversation, and the sheriff says, 'Well, those government credentials don't look like they could be forged very easily, and you fellows will be in tomorrow.' We assured him that we would, and Mr. Rogers said as soon as these fellows come back from Mullan, the detectives, that he wanted the sheriff would send them over to Rogers, as he wanted to talk to them personally, and the sheriff while I was there asked if I wrote any checks. I said I wrote checks, but they were American Express checks, that that is the way I signed myself before I went in there. Rogers received his money by telegraph from his folks at Seattle. After Rogers had shown Mr. Weniger his badge again and the government request for transportation, for the purpose of identification. Mr. Rogers asked the sheriff to show him these checks, but the sheriff said he did not have them, and that they would be back, and as soon as they arrived back from Mullan, he would send them over to us, and we left the sheriff's office. Neither Rogers nor myself saw either of the detectives Weniger spoke of, but he said their names were Hatch and Parnum.

"After leaving Mr. Weniger, we went back to the hotel and went up to Rogers' room. We did

not talk to anyone but Weniger and Bloom, and about fifteen minutes after we left the sheriff's office, Rogers sent me out to see if I could buy any drinks in town. I then left the hotel room and went to places in Wallace. I went to Jack Chisholm's place, next to the Banquet Cafe."

"Q. Did you try to buy there?"

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: In Wallace?

MR. LANGROISE: Yes sir, if your honor please, we will follow this up as a part of the same transaction in Mullan. It is a part of the activity of the defendant, Weniger, in connection with the conspiracy. It is all one transaction. We will show that he was unable to buy from then on and had been able to up to that time.

MR. NUZUM: I do not think that is admissible.

THE COURT: Objection overruled.

MR. NUZUM: Exception.

MR. LANGROISE: You may answer Mr. Cooper.

A. I could not buy. I had been in that place before.

Q. And you had been able to buy on every occasion before?

MR. NUZUM: Just a minute, I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Had you?

A. Yes sir."

(Transcript, pp. 502, 503, 504, 505.)

The witness then told of visiting the Pastime, the White Front, the Pool Room over the Wallace Corner, and the St. Francis in Wallace in each of which he

had bought liquor before, and in which he said he was refused liquor after the interview with Weniger.

The witness also went to Mullan and endeavored to buy liquor there, as he stated, at many places where he had bought it before, but without avail. It is not necessary to set out the testimony as to each place said to have been visited by Cooper. It was similar in every respect to that set out as to the visit to the first place, with objection interposed, overruled by the court, and exception taken. See Transcript pp. 504 to 514.

This witness sought to leave the impression that the interview of Rogers and himself with Weniger was phoney, in that Weniger sought it to uncover Rogers and himself for the purpose of warning the bootleggers in Wallace and Mullan.

On cross examination he admitted that he thought they had been uncovered around the 13th of June, two days before the interview with Weniger (Transcript p. 521). He also sought to leave the impression that the reason given by Weniger for seeking the interview with Rogers and himself was false and untrue. Mr. Rogers, on the other hand, who was a regularly commissioned prohibition officer (Cooper was simply his chauffeur), was fair in his statements. His statement was as follows:

“Cooper came down the stairs with me, and I gave him my key, and he took the two keys over to the desk. I preceded him out of the door and had started down the sidewalk when I heard someone talking to him. I turned around, and Mr. Weniger said to Mr. Cooper, ‘Who is that man with you?’ I stepped back and Cooper said to me, ‘This is the Sheriff and the Sheriff wants to know of me who I was—’

He said he wanted to know who I was. I said to him ‘I think my work has progressed far enough that I can let you know who I am.’ I put my hand in my pocket like this (indicating) and pulled my coat back like this and showed him the badge, and said, ‘Take a good look at this.’ I held it back so that he could see himself that it was a Government badge. He said it looked too complicated to be counterfeited.

Q. What happened after that?

A. He said ‘We have had some bad checks passed in this county, and I have had some men working on it, and they think you two fellows are the men that passed the checks.’ I told him at that time that I was receiving my money—I believe I told him either there or his office—I was receiving my money by telegraph from Seattle, but Cooper was using traveler’s checks.

Q. What occurred then?

A. ‘Well,’ he says, ‘I would like to have you come up to the office anyway. I would like to talk to you.’ and we started over toward the office.

Q. Just you and Weniger?

A. And Cooper. On the way over in his conversation he said that, ‘Of course you realize that as Sheriff I have a right to know who is in this county, and what they are doing.’ I told him at the time that he had a right to satisfy himself as to my identity, but as to what I was doing in this county was none of his business.

Q. Did you go to the Sheriff's office?

A. We did.

Q. And what occurred there?

A. We sat down, and on the way to the office he raised the point again, wanted to know where my little card was. He meant the pocket commission. I told him it was secreted in my suitcase at the hotel, but that I would get it for him if he wanted it. I felt there might be a little doubt in his mind.

He says that the car I was driving has got wrong license plates. He said, 'I have had them checked, and the license plates belong to a Ford car in Seattle.' I told him that was true, that these license plates were formerly plates that formerly belonged to a Ford car that had been cancelled, and had been given to our Department at Seattle by the Director at Olympia instead of providing the regular plates.

We went to the Sheriff's office and sat down. We talked about the car and Weniger says, 'This is Charles Bloom, my Deputy.' I saw Bloom there. After quite a bit of conversation we left the sheriff's office and I directed Cooper to do something in Wallace and afterwards went with him to Mullan. He gave me the various items as the result of his work. Cooper started in around Wallace not over fifteen minutes after we left the Sheriff's office."

On cross-examination, the witness said:

"I had told my business prior to seeing Weniger to two county commissioners, the county auditor, and I think one other gentleman in town. This was early in the work. I had also told Walter, the United States Commissioner, prior to the 15th (Bill of Exceptions, p. 534).

The witness testified further on cross examination:

“I did not feel that we had been identified as prohibition agents, before we saw Weniger, but as special prohibition agents” (Bill of Exceptions, p. 534.)

“I knew a man of the name of McCreary in Mullan. Got acquainted with him probably a month and a half prior to June 15th. I disclosed my work to him.” (Trans. p. 539.)

“I also disclosed my occupation to Marcus D. Needham, the government witness, and to Mrs. Jack Swanson. This was prior to the 15th of June. Also disclosed my occupation to Marie McGill, Mrs. Needham; I don't know whether Mrs. McCleary's son knew my identity or not. He might have.

Q. So that here were about ten people in the Coeur d'Alene country knew what you were there for and what you were doing prior to the eventful 15th of June, weren't there?”

A. Yes.” (Trans p. 539.)

As to the bona fides of the reason given by Weniger for seeking the interview with Rogers, the witness said on cross examination:

“I had no definite suspicions regarding anybody except Simmonds and his partner. They registered at the Ryan Hotel under their right names. I did not know Simmonds' business. I found out afterwards when we came to Spokane. I did not know that he was representing a number of banks on forged check matters. I saw one of the checks at Weniger's office. One had been given to Mr. George Newsome and one to the Theodore Army Store at Wallace. This was on the 15th in Weniger's office in the presence of Cooper. He showed

me one of them. He did not state that the reason they wanted to find out was because of the license plates not being issued for that car in that way. He did bring that point up.”

There are two valid objections to the receipt of this testimony. It was too remote, too wide a jump on mere suspicion.

The writers on the law of evidence say that while the process of determining relevancy of testimony is strictly one of reason and logic, that is, whether the evidence offered has a tendency to prove the point in issue, and that relevancy does not ordinarily depend on probative force, all agree that the degree of probative force is a factor to be considered. The tendency to prove the fact in issue must be so real that it excludes the possibility of the jury acting on suspicion or conjecture. It is the duty of the judge, therefore, to protect the litigants from the possibility of that error. The predicate must have been laid to the satisfaction of the judge to exclude that possibility before the evidence is admissible.

The testimony shows that these prohibition agents had been operating in Shoshone County for about two and one-half months, securing evidence against the bootleggers and taking affidavits to support the same. The strong probability that the agents may have

been uncovered during that period of time ought to have been foreclosed against.

Next, there was no testimony offered as to the time that the witness Cooper had been able to buy liquor in the joints visited by him before his last visit. These two facts were essential to be proven before the testimony received had any degree of probative force. It merely created a suspicion, and persons accused of crime cannot be convicted on suspicion. Moreover, on cross examination Cooper testified that he had suspected that he had been undercover on the 13th day of June, two days before the interview with Weniger and Bloom on the 15th day of June, and Rogers testified that he had disclosed his business to ten or twelve individuals in Shoshone County before the 15th day of June, to some of them very early in his activities in that county.

These latter facts would have shown the entire want of probative force if brought out before the introduction of the testimony, and shown that the judge ought to have required testimony on the subject before admitting the evidence and thereby throwing open to unwarranted suspicion the defendants in this case.

Second: As to the testimony of the attempts to buy in Wallace, it is outside of the scope of the con-

spiracy alleged in the indictment. That conspiracy was alleged to have taken place in the Village of Mullan. The Mayor and Trustees of the Village of Mullan, as well as the Chief of Police and night watchman were the principal actors in that conspiracy. The only connection of Weniger and Bloom with the conspiracy charged was inaction. At the same time Weniger and Bloom and the officials of the City of Wallace, together with a number of people who are alleged to have sold liquor, were under indictment for a conspiracy to violate the National Prohibition Laws in the City of Wallace. We take the liberty of mentioning this fact because a trial was subsequently had and conviction of certain defendants had on that indictment, and that case is now on appeal and will be heard at the same term of court that this appeal is heard, and the court will have the anomalous situation of having testimony in the Mullan case as to what took place in Wallace relied on in the Mullan case, and that same testimony together with other testimony offered to secure a conviction in the Wallace case. The objection that the defendants made as to the introduction of this testimony is found at page 504 of the Transcript, and there the assurance was given the court that this was all one conspiracy. That is, that it was a part of the activities of the defendant

Weniger in connection with the conspiracy, all one transaction. If it was all on transaction, then the Wallace conspiracy case should have been tried with the Mullan conspiracy case, but if by the prosecution of these two separate conspiracies, the United States Attorney, must now say that it was two transactions, two distinct conspiracies, then under the doctrine of *Terry v. U. S.*, 7 Fed. (2nd), 28, opinion by Judge Rudkin, the admission of this testimony was reversible error. A defendant being tried for a conspiracy is under enough handicap if the testimony is limited to that conspiracy alone without further being embarrassed by evidence which pertains to another conspiracy, and for which the prosecutor who is conducting the case on trial has induced a grand jury to indict the same defendant on the other conspiracy, and which indictment is pending at the time of trial.

The error in this case is absolutely on all fours with that considered in the case of *Terry v. U. S.*, supra. Judge Rudkin said in his opinion in that case that:

“The scope of a conspiracy must be gathered from the testimony and not from the averments in the indictment. The latter may limit the scope, but cannot extend it.”

The indictment in this case limited the scope of the

conspiracy to the Village of Mullan. The testimony offered in the case also confined the conspiracy to the Village of Mullan. Therefore, what Judge Rudkin said in his opinion in that case in ruling that testimony of acts and conduct had another place than that shown to be the place of the conspiracy was prejudicial error sufficient to justify a reversal, and this without reference to what we have said concerning the indictment for conspiracy at Wallace.

Assignment of Error No. 116.

The court erred in denying the request of defendants' counsel to have the prosecutor state what prohibition law he was examining the witness, Bloom, about, as follows:

“MR. LANGROISE: Q. Did you ever have any orders from the Sheriff's office with respect to the enforcement of the prohibition laws?

A. I did.

Q. And were they that you were not to pick them up?

A. No.

MR. NUZUM: Just a moment.

MR. LANGROISE: Q. What were they?

MR. NUZUM: I would like to have what he means by the prohibition laws defined, whether it is the State law or the National law.

THE COURT: Objection is overruled.

MR. NUZUM: Exception.”

The question whether or not it was a part of the

duty of the defendants, Bloom and Weniger, to enforce the national prohibition laws, and whether a failure to enforce the state prohibition laws, from whatever cause, or for whatever reason, could have the effect of making the said officers parties to the conspiracy charged, will be argued later in connection with the charge of the court, and we will not pursue that argument now. We note the ruling of the court as showing clearly the theory upon which the case was tried below.

Assignment of Error No. 137.

In the action of the court here set forth, it will be seen that the court again enlarged the scope of the inquiry in overruling objection of defendants' counsel to the following question, propounded to the witness, Bloom, on cross examination:

“Q. Just what did you do during the time you were deputy sheriff to apprehend any violators of the law or stop violations of the law?”

MR. NUZUM: I object to that as irrelevant, incompetent and immaterial, and request that the question be limited to liquor.”

THE COURT: Overruled.”

Assignment of Error No. 144, as follows:

The court erred in denying the motion of defendants,

Weniger and Bloom to strike all the testimony in the case with reference to gambling and prostitution, as follows:

The defendants, Weniger and Bloom, move to strike all the testimony in the case with reference to gambling and prostitution, as not in any manner involving a violation of any laws of the United States or any Federal law of any kind, character or description, and therefore not the subject of a conspiracy to violate any law of the United States.

THE COURT: The motion is denied."

We will argue the question made by the ruling of the court, in connection with the charge of the court, and will not do so here, and merely set forth the error now for the purpose of marking fully the view on which the court below tried the case.

Assignment of Error No. 145, as follows:

"MR. NUZUM: The defendant R. E. Weniger at this time moves the court to instruct a verdict of not guilty and discharge him for the reason that the evidence in this case does not show any conspiracy on the part of the said Weniger or any acts on the part of the said Weniger which would tend to violate the National Prohibition Law or any laws of the United States. I would like to be heard, if your Honor desires to hear me, on that question."

"THE COURT: The motion will be denied."

In discussing this assignment, which is one of the most important assignments specified, we will endeavor to condense the testimony quoted as much as possible,

because this brief is already too long, but still we must quote at some length.

Mr. Weniger is a man forty-five years of age with a wife and three children, and a little home in Wallace. He is a man of most exemplary conduct, and never, as he testified, drank a drop of intoxicating liquor in Shoshone County, Idaho, during his nineteen years residence there. His character and standing in the community are of the highest. The most prominent and outstanding citizens in the community testified that his character as an honorable, upright, law-abiding citizen was of the best. Those testifying were Ramsey Walker, Vice-President and General Manager of the Wallace Bank & Trust Company (Trans. p. 666); Harry L. Day, the largest owner in the Hercules Mine, and at present a large mining operator in Shoshone County, and a resident of that county for forty-three years (Trans. pp. 666, 667); Milton J. Flohr, a banker connected with the First National Bank of Wallace (Trans. p. 667); Norman Ebly, another banker, with the Wallace Bank & Trust Company (Trans. pp. 667, 668); Dr. T. R. Mason, a physician, former mayor of Wallace (Trans. p. 668) and A. H. Featherstone, District Judge for the First Judicial District of the State of Idaho (Trans. p. 689). He had been elected

three times as Probate Judge of Shoshone County and for times as Sheriff of the County.

The only testimony tending to connect Mr. Weniger even remotely with the conspiracy charged is to be found in a number of conversations had with him and testified to by the prohibition agents or their stool pigeons. The first of these was Anthony McGill, a former bootlegger in Mullan, who had been weaned away from his lawlessness by the prohibition agents, whether by moral suasion or otherwise, we do not know. He testified to having seen Mr. Weniger with others in his bootleg joint in Mullan during the campaign of 1928, and saw him at the bar with others who were drinking, but did not know whether Weniger took a drink or not. However, when the crowd went out he followed them over to the Bilberg and saw Weniger take a drink there (Trans. pp. 266, 267, 268). He next told of a conversation with Weniger at Wallace in the Sheriff's office. Weniger had sent for him to inquire about a report coming to him that McGill had been bottling beer in Wallace for the Elks Convention. McGill testified that Weniger jumped on him, and said:

“What is this stuff going around here that you are making beer and fixing up beer for the Elks? And he made several accusations to try and rile me up, and I told him that they were false, and

we got to talking things over, and he says that I was up in that country stooling, that I was helping the government men out, that I was stooling on these joints around town, and that the companies—well, through the conversation he told me that the heads of the companies made him run these places, leave them run wide open, and finally it finished up, he told me to keep out of them joints anyway.” (Trans. p. 269.)

McGill was probably the most perfect specimen of the genus bum, that the prohibition officers could have picked up in all the Coeur d’Alene country, as witness the following on cross examination:

“Q. You were acquainted with every prostitute in Mullan?

A. Practically.

Q. And you associated with every prostitute in Mullan?

A. In a business way I did.

Q. You also went to their houses and bought drinks?

A. Yes.

Q. Was that the business for which you went to their houses?

A. Not altogether.

Q. It was for intercourse, wasn’t it?

A. Sir?

Q. It was for intercourse, wasn’t it?

A. It was not.

Q. What did you go there for?

A. Just to be a good fellow, and buy drinks.

Q. You associated with every gambler in Mullan?

A. I did.

Q. You associated with every bootlegger in Mullan?

A. I did.

Q. Over a period of how long?

A. About a year, I guess.

* * *

Q. You thought there was nothing wrong in any way in associating with whores, pimps, gamblers, and bootleggers and men of that sort?

A. No sir, I was bootlegging myself.

Q. How long had you been in the bootlegging business?

A. Just from the 23rd of August until around New Year's.

Q. That was the only time you had ever engaged in it?

A. The only time.

Q. Prior to that time you had been an honest, hard-working miner?

A. Yes.

Q. You, as other men, earned your bread by the sweat of your brow at that time?

A. I do that right today.

Q. How long did it take you to acclimate yourself to association with these people you have described?

A. I have been around the world since I was a young boy, and I know.

Q. Did you find yourself or not, right at home with these people?

A. Certainly. (Trans. pp. 275-277.)

* * *

Q. Can you give us an estimate of how many drinks you averaged at the Bolo?

A. Well, I am quite a little drinking man.

Q. Well, can you tell the jury the capacity of what you term quite a little drinking man?

A. I can carry a good load.

Q. What does a good load consist of—how many drinks?

A. It is according to how you are feeling, and what kind of shape you are in.

Q. In average shape?

A. I can drink 25 or 30 drinks. (Trans. pp. 280, 281.)

* * *

A. I did not know the defendant Weniger until he came into my saloon prior to election. I never had any conversation with him but once that is when he called me to his office about the Elks. He told me that the clerk at the Ryan had stated I had told him I was bottling beer for the Elks for the state convention and we were doing that. I did not tell him so. He asked me if I was and I told him I had been where there was some beer. I did not tell him I was bottling beer for the Elks and did not deny it. He brought up the question to find out whether or not I was stooling for the Government. He asked me and I told him I was not. He did not ask me what I was doing around there; he told me that. He claimed I was stooling for the Government. I saw him drinking in Mullan during election campaign. He did not tell me he did not want any more talk about bottling beer for the Elks. He did not tell me unless I got to doing something he would vag me. He wanted to know about the Fond deal. We talked things over and he told me I had better cut out drinking around there, I had been drinking and was drunk when I was up there. I was under the influence of liquor always. I would take a drink occasionally. I never had any business with Weniger. I never had any talks with him. I did not know who he was when he was in my place in Mullan until I went with somebody and found out that he was Weniger. I had never had any conversation with Weniger at that time. All that was the matter with Weniger was that he was sore because the government men were in town

and he figured I was helping them.” (Trans. pp. 282, 283).

In McGill’s testimony that Weniger was in his place (the Mullan Inn) drinking, he fixed Mr. Ganlack, an attorney, as being with Weniger, and also Mr. Desbrow (Trans. p. 283).

Mr. Ganlack testified that he was never in the Mullan Inn with Mr. Weniger (Trans. p. 879). Mr. Desbrow testified that Weniger was never in the Mullan Inn when he was there (Trans. pp. 672-673).

Mr. Louis Ingebretson, a son-in-law of Mr. Desbrows’, testified that he was at the Mullan Inn with Mr. Desbrow at the time mentioned by Mr. McGill, and that Weniger was not there (Trans. pp. 674, 675).

The reputation of the witness for truth and veracity was impeached by Walter Frank (Trans. p. 665). By John W. Murphey (Trans. p. 665); George A. Driscoll (Trans. p. 672); by Roy Smith (Trans. p. 671), and by Thomas Campbell (Trans. p. 272).

McGill was also impeached by Miss Lucile Anderson, who related the following conversation with McGill, which the latter had denied:

“My name is Lucile Anderson. I reside at Mullan. I wait on table at the Good Eats Cafe and I know A. H. McGill who was a miner up there and who ran a cafe or soft drink parlor. I saw him in our dining room in April, 1929.

Q. I will ask you, Miss Anderson, whether or not in your conversation in your dining room in April, 1929, yourself, McGills' wife and McGill being present, if McGill didn't state in that conversation that he wanted Bloom to collect some money that was supposed to be owing to him from Charles Fond, and that Bloom would have nothing to do with it, and that then he said, 'I am going to fix that son of a bitch Bloom,' and that 'I am going to raise a lot of Hell, and I will be the man to give testimony against Bloom and Weniger,' or words to that effect and substance?

A. Yes." (Trans. pp. 659, 660.)

Miss Anderson also impeached McGill's credibility (Trans. p. 660).

McGill was again impeached by Charles Fond. McGill had testified that Fond, a partner of his in the Mullan Inn, had directed him to give Deputy Bloom \$30.00 and that he gave Bloom \$30.00, and that Fond told him later that he had to put up a little money once in a while to keep them in good spirits.

Mr. Fond testified:

"I heard the testimony of McGill that I ordered him to give Bloom thirty dollars. I know nothing about that. I never told him to give any money * * * I never knew of McGill giving him any money nor never did McGill represent to me that he had given him thirty dollars." (Trans. p. 667.)

If, after his own disclosures as to his life and character anything more was necessary to mark him

him as a reckless and unscrupulous liar, then it was supplied by the sworn contradictions of his testimony and by the thorough impeachment of his character for truth and veracity. The government did not undertake to sustain his character on rebuttal.

But if everything McGill testified to be taken as true, it does not at all prove or tend to prove Mr. Weniger to have been a party to the conspiracy charged. It might, if credible, tend to show that Mr. Weniger did not like the federal enforcement officials and their methods, and was not disposed to assist them in their work. The statement of the witness McGill that Mr. Weniger said to him that the "heads of the companies (the mining companies) made him run the joints, made him leave them wide open" is so incredible and preposterous as to be valueless as testimony. First, it is incredible that a man of Weniger's standing and good sense would discuss such a matter with a man of McGill's character, especially as McGill says that Weniger suspected him of "stooling" and was trying to ferret him out. Second, it is incredible that the heads of the mining companies could or would endeavor to influence Weniger in favor of the bootleg joints. The mining companies' interest in having their employes work steadily and continuously and skillfully, all of which would be prevented or

much impaired by the use of moonshine whiskey by their employes. Finally, what is to be implied from the statement of Weniger, if he in fact made it, that the "heads of the companies made him leave the joints run wide open?" Merely that he did not interfere with the joints, that he did not enforce against them the laws of the State of Idaho. There is nothing in that to connect Weniger with the Mullan conspiracy. Moreover, the statement of Weniger, as told by McGill, did not apply to the joints at Mullan. The conversation was about his "stooling on these joints around town." That is, in Wallace, where the conversation took place. Wallace is again fixed as the *locus in quo* of the conversation by the concluding words of McGill, "all that was the matter with Weniger was that he was sore because the government men were in town, and he figured I was helping them." (Trans. p. 283.)

William Barron was another witness who testified to a conversation with Weniger. His testimony was as follows:

"On the 7th of August I was in Wallace and saw R. E. Weniger, the defendant. He arrested me. I was walking down the street and saw him and another lady and Bloom talking together; the lady we used to call Barney. She was from Mullan. She was over the Marble Front keeping a sporting house. I saw her, Weniger and Bloom

together. They were talking. I was walking by on the street. This lady came over to me and tried to call me dirty names and everything, and she reached her hand for me and I just took her hand to knock her hand down so she would not hit me, and she lay down and so Weniger and Bloom came over and arrested me and threw me in jail. After I was arrested and thrown in jail I saw Johnson and Webb come into the jail about a half hour later. I heard a conversation between Weniger and Johnson and Webb. Chief Needham was present, and when Johnson and Webb came in Weniger says, 'I got your Federal stool pigeon here.' Weniger said that. He said, 'What do you mean by it?' Then after they called me out they wanted to know if I was a Federal man or if I was not."

Q. Who did?

A. Weniger, and they had quite a few heated words between them. He says, 'I wish you would stay out of my county,' he said, 'I can look after my county better without your help.'

Q. Who said that, and to whom was it said?

A. Weniger.

Q. To whom did he say it?

A. Well, Webb and Johnson was there.

Q. Did you keep any records of your buys or any purchases of whiskey that you made?

A. I did. I kept it in a little book, and had that book on me at the time I was arrested by Mr. Weniger, and when he searched me and found the book and looked it over he bawled me out, he says, 'You should not do anything like that, go ahead and stool on these people.' I said, "I did not stool. I warned them before. I told them I was going to do it.' Weniger said to me, 'I will deport you into Canada if you come up here from Canada and try to get smart. I will deport you to Canada.' This conversation was in Wallace,

Shoshone County, Idaho. Needham was there but I do not think he was there at the time that he told me that he was going to deport me, just me and Weniger was there at the time he was telling me he was going to deport me and was bawling me out after he looked over the book.”

(Trans. pp. 422, 423.)

On cross-examination, he said:

“The first thing I heard Weniger says was, ‘I got your Federal stool pigeon over here, gentlemen, is he a Federal man or what is he?’ He said, ‘I wish you would keep out of my county, I can look after my county better without your help.’ That is all I remember.”

(Trans. p. 426.)

Q. Then as I understand you, you did not tell Weniger that Fitzgerald had told you that if you would go there and get these bootleggers in Mul-lan you could make a thousand dollars?

A. Yes, sir, but this was not Fitzgerald’s case, this was my own case. I told Weniger that Fitzgerald told me that. He has got the statement of it, too, and that is after I got beaten up inside the jail. I told him that, but it is not true. I had to tell something to get out of my case. Sure I made up the story myself.”

(Trans. p. 427.)

Further, on cross-examination:

“The woman I had trouble with was named Barney. I got sore at her because I got a disease from her.”

We submit this testimony without comment except to say that it cannot by the wildest stretch of the

imagination be of value in connecting Sheriff Weniger with the Mullan conspiracy.

Julius Johnson, a prohibition officer, testified as to the conversation in the Sheriff's office, testified to by the former witness Barron, as follows:

"I went to the jail at Wallace on August 7th; saw Weniger, Deputy Sheriff Bloom and Ex-Chief of Police Needham and Webb and Weniger were in the room when I first went there.

Q. What did Weniger say to you at the time you came in there.

A. I rapped on the door and he opened the door and he says, 'I got your God damn stool pigeon in here—what is he, a Federal man or a stool pigeon? I says he is neither, that he is an ex-officer from Mullan. He says, 'Well, we got him for hitting a woman out on the street and knocking her down.'

Q. Was there any other conversation at that time between Webb and Weniger?

A. Mr. Needham at that time spoke up and says, 'He hit a woman,' and Webb spoke to Needham—told him that he thought he would have all he could to take care of his own town without coming to Wallace trying to police that town, and at that time Weniger—Weniger told Webb, 'Webb,' he says, 'we can run this county up here without your help, without the help of the Federals,' and then they got into quite an argument for a few seconds.

Q. During the time you were on that trip did you see Barron?

A. I did.

Q. Where?

A. In the office.

He testified to a further conversation as follows:

“August 14, 1929, we made a number of raids through the country. After these raids at that time I had a conversation with the defendant, R. E. Weniger. It was between the Commissioner’s office and the county jail. I don’t recall who was present. I know Weniger and I were in the conversation. The first thing Mr. Weniger wanted to know if Glen Stowe was a Federal Officer and referring to Glen Stowe, a deputy sheriff of this county. I told him that he was not. He says, ‘Well, what business has he got up in this county?’ And I told him that he was with us to help make these raids, and he then said if Sheriff McDonald wanted to police that county up there he would turn it over to him. He said that he and Charley Summerfield seemed to want to run this county.”

(Trans. pp. 446, 447.)

Mr. Johnson testified to a still further conversation with Weniger as follows:

“I did not have occasion to go to Shoshone County and talk with the Sheriff with respect to our work and his assisting me until two years after I had been appointed at the time when my post of duty was moved to Wallace. That was in 1927.

Q. I will ask you whether or not you asked him for any help.

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. Just give us the conversation at the time that you first talked to him.

MR. NUZUM: I object as incompetent, irrelevant and immaterial on behalf of Weniger and Bloom.

THE COURT: Overruled.

MR. NUZUM: Exception.

MR. LANGROISE: Q. Go ahead, Mr. Johnson.

A. I told Mr. Weniger that I was going to be stationed there, and also asked him if there would be any chance to get a little help if a fellow needed it, and he told me that he had all he could handle without doing anything with the prohibition, and that his men, referring to his deputies, was under bond, that if they would go out with us fellows we might shoot somebody and he would get in trouble over it.

Q. Now, has Sheriff Weniger at any time from that time on given any assistance in the apprehension or the gathering of evidence against violators of the liquor laws in Shoshone County to you?

MR. NUZUM: I object as incompetent, irrelevant and immaterial.

THE COURT: You mean this witness?

MR. LANGROISE: This witness, yes.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. He has not given me any.

(Trans. pp. 447, 448, 449.)

On cross-examination, the witness again gave his version of the conversation at the time of the arrest of Barron:

A. I am not mistaken about that.

With reference to the witness Barron, when I came in there Weniger told me he had arrested a fellow for knocking a woman down. He asked me whether or not he was a Federal Agent or a stool pigeon I was using, and I told him he was not working for us. Then Needham spoke up

and said that the fellow did knock the woman down. Then Webb spoke up and said to Needham that I should think you would have enough to do up at Mullan without coming to Wallace.

Q. And then it was that Weniger turned to you men and said—that is, turned to Mr. Webb and said that he, Weniger, felt he could run the things in this county also, didn't he?

A. Yes sir.

Q. And that was with reference to this fellow that he had arrested and that is what the talk was about?

A. That is what we were talking about.

Q. Yes, sir, and you understood it that way, didn't you, Mr. Johnson, just a few words—that was caused by Needham and Webb in the first place.

A. Well, they are the ones that got in the argument.

Q. They got in the argument and then I don't suppose that you cut in but Weniger did.

A. Yes sir.

(Trans. pp. 450, 451.)

Sam Webb, another Prohibition officer, testified to the conversation in the Sheriff's office at the time Barron was arrested, as follows:

"I was in Wallace on the following morning, August 7, 1928, and went to the Sheriff's office. Julius Johnson went with me. We saw Sheriff Weniger, Deputy Sheriff Bloom and Mr. Needham, Chief of Police of Mullan. When we went in Weniger's first remark was, 'We got your God damn stool pigeon in jail for knocking a woman down on the street out here,' and he wanted to know if he was a Federal man or an ordinary stool pigeon. Mr. Johnson told him

that he wasn't any stool pigeon, that he had volunteered some information and that we had acted upon it, and that was most of the conversation as I remember it. Then the following conversation took place with respect to the operation or the handling of the county. That conversation followed a short conversation that I had with Mr. Needham. Mr. Needham butted in in a way and says, 'We just seen this fellow knock a Mullan woman down on the street.' In answer to that I said to Mr. Needham, that it seems to me that you would do well if you kept your own town in good shape, instead of coming down here, jumping onto somebody that is assisting us, and then the Sheriff told me that he could run his county without our help, and then there was some quarrelling between him and I and that was passed over."

(Trans. pp. 461, 462.)

The witness then testified to the following conversation with Weniger:

"I first met Weniger near the end of 1924 on my first visit to Shoshone County, at his office.

Q. Did you at that time talk with him, or did he talk with you about any help to be given in the enforcement of the liquor laws in that country?

MR. NUZUM: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. NUZUM: Exception.

A. We did have a conversation along that line.

Q. Give that to the Court and Jury as best you can.

MR. NUZUM: Same objection.

THE COURT: Overruled.

A. I had a conversation with him along that line.

THE COURT: Relate, as nearly as you are able to what you said to him and what he said to you, and don't characterize it. Just state what happened.

He told me that he had been elected by the wet element of the county, and he didn't choose to do any work along the enforcement line, and for that reason he wouldn't take any part in our work, or give us any assistance. On August 14th, 1929, I went with other officers to make raids in Shoshone County, and immediately following these raids I had a conversation with Weniger in front of the court house in Wallace, Idaho. He said, 'the first remark by the Sheriff, as I remember it, was that he asked me why we didn't move to Wallace and make christians out of all the persons living there, or words to that effect, and he told me also that he wanted to get into this court, that if he was brought into court he would go somewhere in the East. I do not recall the name of the town, and was going to secure the services of Clarence Darrow to defend him. Also he told me that he was going back to Washington to see if he couldn't—if the Democrats couldn't talk to Senator Borah.

Q. About what?

A. About the Federal Court in Coeur d'Alene."
(Trans. pp. 462, 463.)

The cross-examination of Webb while not particularly informing is interesting as showing the bent of mind of these prohibition agents that nothing is of any importance in life except their undercover work in enforcing the prohibition law. We insert the following from his cross-examination:

"Weniger said, 'We got your God damn stool

pigeon in jail.' I am positive of that. Weniger said that this stool pigeon had knocked down a woman here on the street; that Barron had. The remarks were all continuous; there were no periods or commas. Needham then said this man had knocked a woman down. I resented Needham saying that because I did not think it was any of his business.

Q. You didn't think it was anybody's business, if you saw a great big man knock a woman down, to say anything about it?

A. No, as long as the Sheriff and his Deputy was there.

Q. You thought he could keep absolutely still and make no observations when he saw a man assault a woman?

A. I spoke my thoughts to him at that time. I thought he could keep busy in the city of Mullan as long as they were operating a Chief of Police without assisting us in our work in the town of Wallace.

Q. Now, didn't you say that you thought he could, on your direct testimony, thought he could attend to his business in Mullan without interfering with the man that was assisting you—isn't that your direct testimony?

A. I do not think so.

Q. Do you remember what you said?

A. Pretty well.

Q. What were you objecting to if he wasn't interfering with or had arrested a man assisting you—so far as Needham was concerned what were you objecting to?

A. My main objection was interfering with our work.

Q. Did it interfere with your work if one of your men assaulted a woman and knocked her down on the street for the officers to arrest him.

A. No, I wasn't objecting to the right of the officer to arrest him.

Needham told me he saw the man knock her down and I thought Needham should attend to his own business, and it was then that Weniger said to me, 'I will attend to business in my county.' That was a part of his answer, and without help, he said. The only reason for the conversation was the arresting of the man that we were talking about."

(Trans. pp. 465, 466.)

The testimony of Cooper and Rogers, Prohibition Agents, who testified to a talk with Weniger at his office when they disclosed their identity to him, and that immediately thereafter they undertook to buy liquor in Wallace without avail, and later did the same thing in Mullan, has been fully discussed on pages 45 to 56 of this brief in connection with another assignment, and we trust that the court will turn to those pages and read the testimony of those witnesses, and the observations made by us with respect to the same. We are attempting now to array all the testimony having any tendency to connect the defendant Weniger with the conspiracy charge in order that this court may have it all before them in considering this assignment. The testimony was received by the court on the theory that because the agents' identity had been disclosed to Weniger, and because they could not thereafter buy liquor in Wallace or Mullan,

that Weniger had tipped them off to the bootleggers in both places. Mr. Rogers admitted on cross-examination that he had told his business in Shoshone County to ten or twelve different persons in that county, some of the very early after his entrance into the county. If the testimony had any relevancy before the cross-examination, the facts therein disclosed destroyed its relevancy, and reduced the conclusion to be drawn from the incident to the barest suspicion.

One other conversation with Mr. Weniger and we will have all the testimony introduced by the government bearing on his connection with the Mullan conspiracy.

Mr. Ray Sheridan, a newspaper man, testified as follows:

“MR. LANGROISE: Q. I will ask you, Mr. Sheridan, if during the afternoon of December 18, 1929, in the corridors of this courthouse, you and Mr. Weniger being present, if Mr. Weniger did not say in substance and effect this to you: ‘The reason that I am in this jam with the Federal authorities, is that during my term of office as Sheriff of Shoshone County I have steadfastly refused to cooperate with the Federal dry agents and would not allow myself and men to become stool pigeons for the prohibition officers.’

A. He did.

Q. And did he at the same time and during the same conversation, with the same parties present, state in substance: ‘For the last year Shoshone County has been overrun with under-

cover agents of the dry forces until it is now impossible for a stranger to enter the boundaries of the county without being placed under suspicion.'

MR. NUZUM: The some objection, if your Honor please.

THE COURT: Overruled.

A. Yes sir.

MR. LANGROISE: Q. And if during the same conversation and during the same time and the same parties being present, if he did not state in substance and effect: 'That during the period that I have served as Sheriff of Shoshone County, I have minded my own business, pursuing and catching law-breakers, and when complaints against bootleggers and liquor handlers were registered in my office arrests were made, but I did not send my men snooping into the personal affairs of the citizens of the community.'

MR. NUZUM: Just a moment. The same objection.

THE COURT: Overruled.

A. He did."

(Trans. pp. 757, 758.)

Mr. Weniger denied the conversation with Mr. Sheridan, not that it mattered much, because he had given an interview to the Wallace Press Times, very similar to the interview testified to by Mr. Sheridan, and counsel for Weniger then offered in evidence the Press Times' interview, which the court would not permit to be received in evidence.

(Trans. pp. 961, 962.)

The interview as testified to by Sheridan represents

fairly the attitude of Mr. Weniger concerning federal enforcement in Shoshone County. He has of late years steadfastly refused to cooperate with the federal dry agents, and would not allow himself or his men to become stool pigeons for them. The reason for his action or nonaction in that respect is explicable to everybody familiar with the reign of terror in Shoshone County since the enforcement officials determined to clean up communities therein. The miners and their wives are principally foreigners from Northern Europe, who before they left the place of their birth, and whose fathers before them, made wine and beer for domestic use and they brought their habits in that regard to this country with them. The government posed their undercover men in the several mines, employing miners where they could find them willing to do the work. These undercover men, thus employed, were enabled to visit the families of the miners in their homes and were treated to either wine or beer, and if not treated voluntarily they asked for it, but buying it preferably, and in some cases when money was refused leaving money on a table or a sewing machine or some other article of furniture, so that they could testify that they had paid money for their entertainment.

The writer of this brief attended the November, 1929, session of the Federal District Court for the Northern Division of Idaho held at Coeur d'Alene, Idaho. Entering the federal building he found all its corridors crowded and the court room full to suffocation, and on inquiry was told that most of those in the court room were defendants under indictment, and those in the corridors their friends. It took the court from ten in the morning until five in the afternoon to arraign and receive pleas from those indicted, most of the pleas being guilty, under the advice and assistance of the District Attorney and the Prohibition Agents gathered in the bar for that purpose. The writer saw an old woman, a grandmother, assisted out into the space before the Judge's bench, who, after looking around the court room with a glance of despair, was assisted by some one of the prohibition officers in entering a plea of guilty. He saw a young woman with two very small children hanging to her skirts, also arraigned at the bar, the little children smiling in glee at the novelty of the occasion, while the poor mother glanced around blankly for succor or support or sympathy. He saw young girls, hardly attained to the state of puberty, arraigned and sentenced to fines and imprisonment in the county jail, and he saw old men, middle aged men and boys under-

go the same ordeal. He was reminded of Macauleys' story of the bloody assizes, except that Judge Cavanaugh was kind and considerate, and looked troubled at the unpleasant task before him. Enforcement officials who could thus pursue ignorant men and women, who before their entrapment and arrest were void of any idea of wrong or guilt, were not only doing a gross injustice to those men and women, but were working a great wrong to the nation in inculcating in the minds of the people of the communities thus persecuted that our great and beneficent government was one of cruelty and intolerance. If Mr. Weniger conceived a prejudice against these prohibition agents, and refused to assist them in their work, it would seem to an ordinary mind, not influenced by fanaticism, that he was well justified in his attitude. There is nothing else in the case against him, unless the testimony of the vile, debauched, malevolent and untruthful McGill that Mr. Weniger told him that he had been compelled to let the liquor joints run wide open, be considered as showing guilt on his part. We have discussed that incident in another connection, and will not now repeat the discussion.

Finally, there is no testimony, and no contention on the part of the government that Mr. Weniger profited in any manner or form from the transactions carried

on at Mullan. In that feature this prosecution is different from any conspiracy case we have found in the books. It is difficult to believe that a man of Mr Weniger's standing before the people of Shoshone County would engage in a criminal conspiracy against the government with no other motive than distaste for the manner of federal enforcement in his county.

There are some appellate courts which refuse to interfere if there is any testimony, however discredited, or however inherently untrue, upon which the jury might have founded a verdict. But this action of the court here was before the verdict, and if the lower court should have withdrawn the case as to Mr. Weniger from the jury, as requested, and did not do so, and that is assigned as error, then we submit that this court ought now to do that which the lower court out to have done and refused to do.

All the courts insist that there must be *substantial* evidence of guilt in order to justify a conviction.

Wright v. U. S., 227 Fed. 855;

Union Pacific Coal Co v. U. S., 173 Fed. 740;

Nosowitz, et al v. United States, 282 Fed. 575;

Yusem v. United States, 8 Fed. (2nd) 6;

Ridenaur v. United States, 14 Fed. (2nd), 888;

Van Gorder v. United States, 21 Fed. (2nd), 939;

McLaughlin v. United States, 26 Fed. (2nd) 1;

Sugarman v. United States, 35 Fed. (2nd) 663;

Ching Wan v. United States, 35 Fed. (2nd) 665.

Here, as we have shown, there was no testimony whatever of any act on the part of Mr. Weniger connecting him with the conspiracy, and nothing to be drawn from the conversations testified to by the agents or their stool pigeons, which showed anything more than inaction on his part. As to these conversations, the one making most against Mr. Weniger was that testified to by McGill, and that witness, we have shown, was so thoroughly impeached that his testimony was worthless for any purpose.

In *Jones v. Harris*, 122 Wash. 69; 210 Pacific, 25, it was said of such testimony:

“Testimony of disinterested witnesses as to admissions, when corroborative of other evidence, is sometimes evidence of a most convincing character. But when, as here, the testimony is that of interested witnesses, is not only not corroborated, but is shown by undisputed evidence to be in a large degree contrary to the actual facts, and is relied upon to prove the entire case, it cannot be said to rise to the dignity of evidence. If it were other-

wise, the citizen's right of personal liberty and right of private property stands upon a very shadowy foundation.

This court early in its history discarded the scintilla of evidence doctrine, and has uniformly held that a verdict to be sustained must be supported by substantial evidence. Applying the rule to the present case, fortified by the case of *Ludberg v. Barghoorn*, supra, we hold that the present verdict and judgment is not supported by substantial evidence."

The opinion in this case is by Mr. Justice Fullerton, an able and conservative judge who arrays the authorities on the subject, among others *Garrison v. Akin*, 2 Barb. (N. Y.) 25, in which it was said:

"There have been but few judges of elementary writers, who have not had occasion to speak of the character of this kind of evidence; such is the facility with which it may be fabricated, and such the difficulty of disproving it, if false. It is so easy, too, by the slightest mistake or failure of recollection, totally to pervert the meaning of the party and change the effect of his declarations, that all experience in the administration of justice has proved it to be the most dangerous kind of evidence, always to be received with great caution, unless sustained by corroborating circumstances."

Judge Fullerton said further of testimony as to such admissions:

"An examination of the cases on the question collected in 22 C. J. 290, et seq., will show that the courts themselves, when they have been the trier of the facts, have generally refused to give such evidence credence when contradicted and unsupported by any corroborating circumstance,

and this even where the witness testified was not a party to the cause, and otherwise had no apparent reason for misinterpreting or misstaging the admissions to which he testified.”

Assignment of Error No. 146.

This assignment relates to the refusal of the court to instruct a verdict of not guilty as to the defendant Bloom, and to discharge him, as follows:

“MR. NUZUM: The defendant Charles Bloom moves that the Court instruct a verdict of not guilty and discharge him for the reason that the evidence in the case wholly fails to connect him in any manner with a conspiracy to violate the National Prohibition Law or any law of the United States or to do anything more than to show perhaps a knowledge of the violation of the state law in reference to gambling in some instance, nothing with reference to prostitution, and that therefore there is nothing to be submitted to the jury in so far as he is concerned.”

THE COURT: Motion is denied.

MR. NUZUM: Exception.”

(Trans. p. 764.)

Fortunately Mr. Bloom was not considered sufficiently important to justify the agents and undercover men engaging him in conversations and then testifying falsely as to statements made by him which, if not false in their entirety, were so highly colored as to make them false in fact. There was very little testimony which at all tended to incriminate Mr.

Bloom. That testimony was given by the impeached and self-impeached witness Anthony McGill, who testified:

"I was never interfered with by Mr. Bloom, I was assisted by him once. There was a raid on one evening up there, it was along about Christmas time in 1928.

Q. Do you know whom the raid was being staged by?

A. Why, I know that Mr. Webb and Mr. Johnson were there and I heard that Mr. Foster was with them; Webb and Johnson are Federal Prohibition Agents. I did not see Mr. Foster.

Q. What happened as far as Mr. Bloom is concerned?

A. Mr. Bloom came in the place and told me that they were raiding and I was wondering what to do. There was quite a few drunks around, and he says, 'You got your car here, get the stuff in the car and get it out of here, get it out of the way,' and we started to taking it out and then there was another defendant here in the case, he says, 'get out of the way,' he says, 'I will take it.'

Q. Who is that?

A. Jack Malloy. I was not raided on that occasion. They left. I later had trouble with Mr. Fond over the place. I later had a conversation with Mr. Bloom, the defendant, in front of Harwood's about my trouble with Fond.

Q. State that conversation?

A. Oh, well, we just met and I told him that I had went down and paid the taxes on the fixtures and that I was going to try to make a go of it, I thought maybe I could, and I was going to make some arrangements with Mrs. Rantella, the woman that owned the fixtures.

Q. What did Mr. Bloom have to say?

A. Well, he said, 'You might as well go ahead and maybe you can make a go of it, all right.' So he told me there is no use trying to buck Charley because he did not have anything. Charley is Charley Fond."

(Trans. pp. 261, 262.)

On cross-examination, McGill testified that:

"A. I went out of the place with Bloom, yes, if I remember right. I am pretty sure I went out of the place with Charley Bloom that night and went over to the Hunter to find out about it.

Jack Malloy was there all of the time this was taking place and Jack said, 'Go on, I am an old man,' or something, 'I don't care whether I am in jail or not and I will take the fall.' And Bloom says, 'Well, there is no use arguing with him, let him go.' I left the old man there to take the fall.

(Trans. p. 285.)

To the other impeachments of McGill's truthfulness, we now add another. McGill testified that Jack Malloy was in his joint when Mr. Bloom came in, and as he said, notified him that the federal officers were in town and raiding, and offered to assist him, saying, "You got your car here, get the stuff in the car and get it out of here, get it out of the way." (Trans. p. 262.)

Mr. Malloy testified, denying that Mr. Bloom was in the joint at the time of the threatened raid. He said:

"I heard the testimony of McGill when he said

something about Federal raids. I was in there the evening of the threatened Federal raid. It was on the 26th of December, the evening after Christmas. Bloom was not in there that day. I saw Bloom in the Mullan Inn once. A couple of evenings before Christmas he brought me a letter addressed by my sister from the Sheriff's office. McGill was behind the bar and Bloom came in and he said 'Is there a man named Malloy here?' I said, 'Yes.' He said, 'There is a letter, give him that.' That is the only time I ever saw him in the house."

(Trans. p. 676.)

If McGill was worthy of belief this testimony of McGill might be sufficient to show such aid and comfort to one of the conspirators as to make Mr. Bloom *particeps criminis* to the conspiracy charged. We have already discussed in connection with the motion to instruct a verdict for Mr. Bloom the question whether this court ought to affirm a judgment when there is any testimony whatever to sustain a verdict, although the testimony be so discredited as to make it unworthy of belief, and refer to that discussion in connection with this assignment of error.

McGill testified also to the election incident allowed by the court over objection and exception (Assignments of Error Nos. 14 & 15.) But that incident was so inconsequential that it carries no injurious implication against Mr. Bloom. McGill testified to one other incident as follows:

“Q. Now then, had Mr. Fond said anything to you prior to that time as to what you were to do with Mr. Bloom?”

A. Yes sir.

Q. What did he tell you?

A. Why, he told me one day, he came in and asked me how much money I had in the register, and I told him, and he said, ‘Well when Charley Bloom comes over, Charley Bloom will come over, why give him thirty dollars of it for me.’

Q. Did Mr. Bloom come in?

A. Mr. Bloom came in and I handed it to him.

Q. Was there anything said?

A. No, sir, there was nothing said about it, but Charley Fond had told me that we had to put up a little money once in a while to keep them in good spirits.

THE COURT: I want to be clear about this. Whom was it you say told you to turn this thirty dollars over to Bloom?

A. Charley Fond.

MR. RAY: Q. He was your partner in running the Mullan Inn?

A. Yes, sir, he was the boss and he carried the keys to the register and all that stuff at the time.”

(Trans. pp. 263, 266.)

This testimony cannot have any effect as showing Mr. Bloom’s complicity as one of the conspirators. Conversations between co-conspirators are not competent for that purpose, and since Mr. Bloom was not otherwise proven to be one of the conspirators, the testimony amounts to nothing. But McGill was again impeached by the testimony of Fond, his partner, who

said that nothing of the kind ever took place. Fond said:

“I heard the testimony of McGill that I ordered him to give Bloom thirty dollars. I know nothing about that. I never told him to give him any money. I never knew of McGill giving him any money or never did McGill represent to me that he had given him thirty dollars.”

(Trans. p. 677.)

We submit that any acceptance of McGill’s testimony by the court for the purpose of affirming the judgment against Mr. Bloom is repugnant to every sense, lay or judicial, of what is due persons accused of crime, and that this court on a technical and irrational rule should not give it any significance whatever.

This is all that there was against Mr. Bloom. His family lived in Mullan, but he was a Deputy Sheriff in charge of the jail at Wallace, and did not return to his home except once a week and then overnight. He had a better opportunity, however, to know what was going on at Mullan than Mr. Weniger, but that he had no part in the conspiracy, unless the fact that he knew what was going on and did nothing to stop it, connected him with the conspiracy, will be manifest when the court looks through the testimony to find any incriminating fact against him other than that testified to by McGill.

Assignments of Error No. 149 and 150.

These assignment relate to the general charge given by the court to the jury as follows:

“With respect to the defendants, R. E. Weniger and Charles Bloom, Sheriff and Deputy Sheriff respectively of Shoshone County, Idaho, and the defendants, R. O. Welch and Hartcourt Morphy, policeman of the village of Mullan, Idaho, I instruct you that these defendants are not on trial for the mere failure to enforce the prohibition laws, state or national, in the village of Mullan or in the county of Shoshone. These defendants are not accused of acts of omission but of commission, namely, that they entered into the conspiracy described in the indictment to violate the prohibition laws of the United States in the particulars set forth in the indictment.”

“But, gentlemen of the jury, in this connection I instruct you that where individuals are the occupants of a public office or offices and whose duties in whole or in part require of them the enforcement of the liquor laws and the arrest of those engaged in such law violation, and it is made to appear that within the jurisdiction of such offices, such laws are openly notoriously and continuously violated in such manner and under such circumstances that the jury is satisfied beyond all reasonable doubt that such peace officers in fact knew of such flagrant, open and continuous violations, if you find there were such and that such officers did little or nothing to enforce the laws that were being violated by arresting those engaged in their violation. These are facts and circumstances which you have a right to take into consideration together with all the other facts and circumstances disclosed by the evidence in the

case as shedding light on whether or not such peace officers, or any of them, actually joined the conspiracy charged in the indictment and aided and permitted its execution. In such circumstances you should inquire whether such acquiescence in such law violation, if you find there was such, was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers or was the conduct passive and intentional with full knowledge of a conspiracy to bring about such violation and was passed with a view and for the purpose of protecting and aiding it. In other words, was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from performing the duty with the knowledge of the violations for the purpose of aiding and assisting in the conspiracy to violate the laws which were being violated?

Mere lack of diligence in the performance of their duties on the part of public officers is not enough. There must in addition be proof of knowledge of facts showing an intention on the part of the officers in question to aid in the unlawful act by refraining purposely from doing that which they were by the duties of their office bound to do, with the intent and for the purpose of becoming a party to and aiding in the execution of a conspiracy to violate those laws. This you must determine by your verdict in the light of all facts and circumstances disclosed by the testimony in the case."

It will be noticed that the charge sedulously avoids informing the jury what the duties of public office are under the laws of the State of Idaho, in regard to the enforcement of the liquor laws and the arrest of

those engaged in such violations. That no doubt was intentional, because it was the theory of the court all through the trial that the failure on the part of the state officers to enforce the state laws was sufficient to connect them with the conspiracy to violate the laws of the United States. That, we submit, is not the law. It was not any part of the duties of the sheriff or his deputies to mop up and attempt to stop violations of the laws of the United States, however frequent or flagrant they may have been. The Supreme Court of the United States in a very late case has held that state officers are not officers of the law within the meaning of the Volstead Act, which imposes the duty of making searches and seizures on "any officer of the law." *Gambino v. United States*, 275 U. S., 310: 72 Law Ed. 293. Mr. Justice Grandeis said in that case:

"The government contends that the evidence was admissible, because there was probable cause, *Carroll v. United States*, 267 U. S., 132, 153, 69 Law Ed. 543, 551, 39 A. L. R. 790, 45 Sup. Ct. Rep. 280, and also because it was not shown that the state troopers were, at the time of the arrest, search, and seizure agents of the United States. The defendants contend that there was not probable cause and that the state troopers are to be deemed agents of the United States, because Sec. 26 of Title II, of the National Prohibition Act imposes the duty of arrest and seizure where liquor is being illegally transported,

not only upon the Commissioner of Internal Revenue, his assistants and inspectors, but also upon 'any officer of the law.' We are of opinion on the facts, which it is necessary to detail, that there was not probable cause. We are also of opinion that the term 'any officer of the law' used in Sec. 26 refers only to Federal officers, and that the troopers were not, at the time of arrest and seizure, agents of the United States. Compare *Dodge v. United States*, 272 U. S. 530, 531, 71 L. Ed. 392, 393, 47 Sup. Ct. Rep. 191."

See *Pettibone v. United States*, 148 U. S. 197.

That case was one of conspiracy to obstruct and impede the administration of justice in the courts of the United States. This conspiracy was attempted to be shown by the acts which were a crime under the laws of the State of Idaho, and it was attempted to sustain those acts as proof of the conspiracy charged on the ground that the general evil intent might be found in the purpose to commit crime, and that that was sufficient to make the conspiracy one against the United States, because the doing of the acts therein was also an actual obstruction of justice in the courts of the United States. In the opinion of Chief Justice Fuller it was said:

"While offences exclusively against the States are exclusively cognizable in the state courts, and offences exclusively against the United States are exclusively cognizable in the Federal courts, it is also settled that the same act or series of acts may constitute an offence equally against the

United States and the State, subjecting the guilty party to punishment under the laws of each government. *Cross v. North Carolina*, 132 U. S. 131, 139. But here we have two offences, in the character of which there is no identity; and to convict defendants of a conspiracy to obstruct and impede the due administration of justice in a United States court, because they were guilty of a conspiracy to commit an act unlawful as against the State, the evil intent presumed to exist in the latter case must be imputed to them, although ignorance in fact of the pendency of the proceedings would have otherwise constituted a defence, and the intent related to a crime against the State.”

The decision is important to be borne in mind in this case. Under its doctrine, a conspiracy to violate a law of the state does not become a conspiracy to violate the law of the United States, because in the course of the conspiracy a law of the United States was necessarily violated.

It is apparent from these decisions, we submit, that before the adoption of the 18th Amendment, it was no part of the duty of the sheriff or other state officer to do anything whatever to stop violations of the laws of the United States. There is nothing in the 18th Amendment which changes the respective rights and obligations of the state and the nation, unless it be found in the second clause of that amendment, which declares: “The congress and the several

states shall have concurrent power to enforce this article by appropriate legislation." What was meant by "concurrent power to enforce by appropriate legislation" has never been authoritatively declared by the Supreme Court.

In *Rhode Island v. Palmer*, 253 U. S., 350; 64 Legal Ed. 946, the majority contented itself with stating the conclusions reached and did not attempt to render a reasoned decision. With respect to the clause in question, the court says:

"The words 'concurrent power' in that section do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several states or any of them; nor do they mean that the power to enforce is divided between Congress and the several states along the lines which separate or distinguish foreign and interstate commerce from intrastate affairs.

"The power confided to Congress by that section, while not exclusive, is territorially coextensive with the prohibition of the first section, embraces manufacture and other intrastate transactions as well as importation, exportation, and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several states or any of them."

The concensus of opinion has been, we believe, that the court intended to declare that both the nation and the state might legislate in aid of prohibition by the adoption of laws of their own, and invest in

their own officers the duty of enforcing their own laws. That has been the practice of the states, and whether that power is retained to them by virtue of their sovereignty or is granted to them by the Amendment, it is not necessary to inquire. No concurrent legislation in the ordinary sense has ever been attempted, and the Supreme Court has said that such concurrent legislation was not contemplated. No doubt the states, by virtue of the clause in question, could require by legislation that the officers of the state concur in enforcing the Volstead Act, but the State of Idaho has never undertaken to pass any such laws. Its laws on the subject of prohibition are found in *Idaho Compiled Statutes*, Section 2601, et seq. vol. I. These statutes were all passed prior to the 18th Amendment, and by virtue of the inherent sovereignty of the state.

We have seen that the state officers are not officers within the meaning of the Volstead Act, and we suggest further that that act nowhere devolves duties upon officers of the several states. Moreover, it could not do so, under the interpretation of concurrent legislation given by the Supreme Court, and under the case of *United States v. Jones*, 109 U. S., 513, where Mr. Justice Field uses this language with respect to the

use by the Federal government of state officers and state tribunals:

“The use of the courts of the States in applying the rules of naturalization prescribed by Congress, the exercise at one time by State justices of the peace of the power of committing magistrates for violations of federal law, and the use of State penitentiaries for the confinement of convicts under such laws, are instances of the employment of State tribunals and State institutions in the execution of powers of the general government. At different times various duties have been imposed by acts of Congress on State tribunals; they have been invested with jurisdiction in civil suits and other complaints and prosecutions for fines, penalties, and forfeitures arising under laws of the United States. 1 Kent, 400. And though the jurisdiction thus conferred could not be enforced against the consent of the States, yet, when its exercise was not incompatible with States duties, and the States made no objection to it, the decisions rendered by the State tribunals were upheld. Whatever question might arise as to such delegation of authority, we can see none where the inquiry relates to an incidental fact, not involving in its ascertainment the exercise of any sovereign attribute.”

It appears in *Allen v. United States*, 4th Fed. 2nd, 688, that in the trial of that case in the lower court, the quiescence or neglect of state officials, and even of state officials performing official duties, was received in evidence and considered against the state officials as evidence of guilt of conspiracy to violate the pro-

hibition law. That case, we have no hesitancy in saying, ought not to be considered as an authority in any court. It brushed aside fundamental rights on the barest quibbles, and found inadmissible excuses for errors below of the most damaging character to the accused, even going to the extent of holding that declarations of a woman running a fancy house, made casually to a frequenter of her house, were properly received in evidence, because, although the name of that woman was not known, and it was not in evidence that she had ever dispensed intoxicating liquors in her house, and although she was not named in the indictment as one of the conspirators, the court held that she had dispensed liquors in her house, and was, therefore, a party to the conspiracy. No question was made in that case, such as we make here, and the fact that such evidence was received by the court without objection against state officials, strips the case of any value as an authority for the purpose here argued.

The charge in question also stated to the jury that if such peace officers in fact knew of such flagrant, open and continuous violations, that that was a circumstance which they had a right to take into consideration, together with all the other facts and circumstances discussed by the evidence in the case,

as shedding light on whether or not such peace officers, or any of them, actually joined the conspiracy charged. This portion of the charge was misleading, because there were no other circumstances in the case having reference to the peace officers except such as were offered for the purpose of showing their complicity in the conspiracy.

The charge further informed the jury that if the acquiescence in the law violation was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers, then there was no criminality on their part, but that if the conduct of the officers was passive and intentional, with full knowledge of a conspiracy to bring about such violation and was passed with a view and for the purpose of protecting and aiding the conspiracy, then that might be accepted as evidence of their complicity in the conspiracy.

Quoting from the charge the following words:

“In other words, was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from performing the duty with the knowledge of the violations, for the purpose of aiding and assisting in the conspiracy to violate the laws which were being violated?”

We submit that mere passive conduct of state of-

ficers, with knowledge of a violation of the laws of the United States, having no duty in the premises, cannot make them guilty of aiding and abetting in the violation of such laws.

Mr. Bishop, whose work on criminal law is a classic, thus states the doctrine:

“A mere presence or presence combined with refusal to interfere or with concealing the fact, or the mere knowledge that a crime is about to be committed, or a mental approbation of what is done, while the will contributes nothing to the doing, will not create guilt. As a matter of evidence such facts have a greater or less weight, according to the circumstances, but in law there must be something a little further, as some word or act; or, in the language of Cockburn, C. J., spoken indeed to a case where there was no presence, one to be a party in another’s crime must incite or procur or encourage the act.”

Bishop’s Criminal Law, vol. 1, sec. 633.

See also the cases cited to the text.

This is good law, both on reason and authority. It is difficult to see on reason how it is possible for one, having no duty in the premises, to be guilty of joining in a conspiracy by simply doing nothing.

Assignment of Error No. 150½.

This specification relates to the following instruction given by the court as a part of its general charge:

“I further instruct you that persons conspire to commit an offense against the United States when they conspire to do an act or concerts of acts which can be carried into effect only by violating the criminal laws of the United States. When parties conspire to commit acts and things which necessarily and inevitably must constitute a violation of the criminal laws of the United States, then such parties conspire to commit an offense against the United States; and a party conspires to commit an offense against the United States when he conspires to bring about the commission of such offense by another or others.”

This part of the general charge was excepted to necessarily in a hasty and general manner, but sufficiently to identify the part of the charge intended to be excepted to. See exception taken, page 792, Transcript. By some oversight, it was omitted from the Specifications of Error. We have filed a motion in this court to amend the Specifications of Error, so as to include that portion of the charge referred to as No. 150 $\frac{1}{2}$, and, on the assumption that that motion will be granted, we proceed to argue the specification.

The instruction in effect tells the jury that parties conspire to commit an offense against the United States when they conspire to do nothing more than to violate the laws of the state.

“When parties conspire to commit acts and things which necessarily and inevitably must con-

stitute a violation of the criminal laws of the United States, then parties conspire to commit an offense against the United States, and a party conspires to commit an offense against the United States when he conspires to bring about the commission of such offense by another or others:"

The charge means, if it means anything, that a conspiracy to violate the laws of the State of Idaho prohibiting sales of intoxicating liquors by giving immunity for such violations under the law of Idaho, was necessarily a conspiracy to violate the laws of the United States. That clearly is not the law.

In the *License Tax Case*, 5th Wallace, 462, the government was prosecuting for sales of intoxicating liquors without a license in states in which the sale of intoxicating liquors was forbidden. It was argued for defendants in error in those cases that the license to carry on a particular business gives authority to carry it on; that the dealings in controversy were parcel of the internal trade of the state in which the defendants resided; that the internal trade of the state is not subject in any respect to legislation by Congress, and can neither be licensed nor prohibited by its authority; that licenses for such trade granted under acts of congress must, therefore, be absolutely null and void, and consequently that

penalties for carrying on such trade without such licenses could not be constitutionally imposed.

The court thought it might be difficult to sustain the license laws if the licenses gave authority to conduct the business licensed in states which forbade the sales of liquor, but did not consider that the federal licenses gave any such authority, saying:

“If, therefore, the licenses under consideration must be regarded as giving authority to carry on the branches of business which they license, it might be difficult, if not impossible, to reconcile the granting of them with the Constitution.

“But it is not necessary to regard these laws as giving such authority. So far as they relate to trade within State limits, they give none, and can give none. *They simply express the purpose of the government not to interfere by penal proceedings with the trade nominally licensed, if the required taxes are paid.* The power to tax is not questioned, nor the power to impose penalties for non-payment of taxes. The granting of a license, therefore, must be regarded as nothing more than a mere form of imposing a tax, and of implying nothing except that the licensee shall be subject to no penalties under national law, if he pays it.”

Under the doctrine of this case, it is impossible to found a conspiracy on the conduct of the officials of the village of Mullan in the course of conduct pursued by them with respect to sales of intoxicating liquor within the precincts of the village, and the case

clearly shows the inaccuracy of the court below in stating the law as it did in the portion of the charge here involved.

If the licenses issued by the government of the United States to sell liquor in states where the sales of liquor were forbidden "simply expressed the purpose of the government not to interfere by penal proceedings with the trade nominally licensed," then the converse must be true that the action of the authorities of the village of Mullan in licensing sales of liquor therein must also simply express the purpose of the village not to interfere by penal proceedings with the trade nominally licensed, and if the United States might do that without violating the prohibition law of the state, then clearly the state or any of its instrumentalities may do the same thing without violating the prohibition law of the United States.

The evidence in the case must be considered in connection with this instruction, and the utmost that can be found or implied from the evidence was that the officers of the village of Mullan would not enforce against sellers of liquor within the village the laws of the State of Idaho. In fact, if instead of camouflaging their purpose by issuing licenses for innocent businesses, they had actually issued licenses to sell liquor and no more, they could not, under the doctrine

of the license cases, be guilty of any offense against the laws of the United States.

When it is considered that there are two sovereignties in every state, each distinct and separate from the other, it is a clear misconception to think that a conspiracy simply to violate the laws of the state can also be considered a conspiracy to violate the laws of the United States. The conspiracy consists in a meeting of the minds to violate the laws of the United States. It cannot be proven by a meeting of the minds to violate the laws of the state. In this connection we again insist that there is no evidence whatever in the case to show that the officials of the village of Mullan intended to do anything with respect to sales of liquor, except to refrain from enforcing the state laws by its own police. The officials of the village were as guiltless of any offense against the United States by that course of conduct, as the United States was guiltless of any offense against the states by issuing licenses to sell liquor in such states which, as the court in the license cases say: "simply express the purpose of the government not to interfere by penal proceedings with the trade nominally licensed."

It is not our contention that the administrative officers of the state may not conspire to violate the Volstead Act by giving active and affirmative pro-

tection to persons engaged in selling liquor. We take no exception to federal cases in which such conspiracies have been prosecuted and punished. Our contention here is that this conspiracy depends upon the proof against the council of the village of Mullan, which was one of the instrumentalities of the State of Idaho, and that nothing in the evidence shows, on the part of the village or any of its officials, more than quiescence in permitting the sales of liquor within the village. And if such conduct constituted no conspiracy against the laws of the United States, then the defendants in error, Weniger and Bloom, could not be guilty in aiding that abortive conspiracy.

Assignment of Error No. 153:

This specification is directed to the failure of the court to give the following instruction asked for by the defendants:

“The indictment alleges that Weniger and Bloom were members of the conspiracy charged. It is in proof that said persons are officers of the State of Idaho, to-wit, the sheriff of Shoshone County, Idaho, and his deputies. If they actually entered into a conspiracy to maintain the nuisances charged, or to keep, possess, sell, transport or manufacture intoxicating liquors, then their official character does not render them immune from punishment for that offense. But the court charges you that their official character

as state officers does not make them guilty, however remiss they may have been, if they were remiss, in failing to enforce the laws of the State of Idaho against the commission of nuisance or other infractions of the state law. It is no part of their duty as officers of the state, under the laws of the United States, to make arrests without a proper warrant under the laws of the United States, for infractions of the prohibition law, or to otherwise endeavor to enforce such laws, and their mere failure to make such arrests, or to otherwise endeavor to enforce such laws, if that be the only evidence to connect them with the conspiracy charged, would not make them guilty under the indictment in this case, and they should be acquitted."

This instruction is the converse of that given by the court, states the law as we conceive it to be, and it was a necessary instruction in view of the course of conduct pursued by the government in presenting its testimony.

Assignment of Error No. 155 relates to another instruction asked by the defendants, and refused, and was as follows:

"The court charges you that the mere presence of an accused at a place or places where overt acts were being committed in aid of the conspiracy, coupled with a refusal to interfere, or mere concealment of the crime, or a mere knowledge that the crime was being committed, or a mental approbation of what was being done while the will contributed nothing in the doing, would not

be sufficient, without more, to justify you in finding that a particular defendant was a party to the conspiracy. Such acts on the part of a defendant would be circumstances to be considered in determining whether any particular defendant was a party to the conspiracy, but standing alone, they would not be sufficient evidence of guilt to justify a conviction."

The law therein stated we believe to have been correctly stated. *Bishop's Criminal Law*, Vol. 1, Sec. 633 and cases cited.

The Court gave nothing on the subject in its general charge, and ought to have given the special instruction asked.

Assignment of Error No. 156:

This specification relates to the refusal of the court to give the special instruction asked by the defendants as follows:

"In connection with the testimony as to the activity or inactivity of Sheriff Weniger and his deputy, Bloom, as bearing on their guilt or innocence as conspirators, the court charges you that since March 26, 1927, it has been law of the State of Idaho that said officers have no authority to make searches in homes or other places in which intoxicating liquors might have been kept for sale without a search warrant issued on sworn evidence of a positive character. A search warrant issued on information and belief, or based on conclusions rather than facts, gives no authority

for such a search. The court charges you further, as bearing on the activity or inactivity of said defendants that it is your duty to consider under the evidence whether the sheriff was furnished by the County Commissioners of Shoshone County with a sufficient force of deputies or with a fund to make possible on his part activity greater than the evidence shows to have been exerted by him in enforcing the prohibition laws of the state."

The government had been pursuing the defendants for their failure to enforce the laws of the State of Idaho with respect to liquor violations. The defendant, Weniger, undertook to meet that line of attack by showing the handicaps under which he had been operating. He had a right to do that. Among the other handicaps was the case of *State v. Arreguie* (Idaho), 254 Pac. 788, in which case it had been held that state officers have no right to make searches and seizures without a search warrant issued on sworn evidence of a positive character, and that a search warrant issued on information and belief, or upon mere conclusion, and not facts, was null and void. The defendant, Weniger, had been prevented from referring to that case and its effects on his actions by an adverse ruling of the court as follows:

"MR. NUZUM: Q. Was there any ruling of the Supreme Court that handicapped you in 1927?"

A. There was.

MR. RAY: Just a moment, your honor please. We object to both the form of the question and—
 THE COURT: "The objection is sustained."
 (Trans. p. 688.)

Certainly the testimony sought to be elicited by the question was competent, and it was relevant in view of the purpose for which it was asked.

The effect of the absence of the testimony made the special instruction asked more necessary. We can conceive of no reason which would justify the refusal to grant the instruction.

Assignments of Error No. 157 and 158:

These specifications complement each other, and relate to the failure of the court to give the special instructions asked, as follows:

"The court charges you that the fact that many persons in a community or in a neighborhood are engaged in violating the law is not evidence of a conspiracy on their part to violate the law. There must have been a meeting of the minds of such persons in an agreement to so violate the law in which each person was to do something more than to himself violate the law. Any number of separate violations of the law, without such an agreement, does not constitute a conspiracy."

"The court charges you that in order to constitute a conspiracy to violate the federal prohibition laws, there must have been 'a serious

and substantially continued group scheme for co-operative breaking of such laws.' Such conspiracies are most difficult to try without prejudice to innocent defendants, and testimony should be carefully scanned by the jury in alleged conspiracy cases to determine whether the acts proved show simply individual action without concert, or whether it shows 'a serious and substantially continued group scheme for co-operative law breaking.'

The court did not at all instruct the jury on this most important question. The chief justice and presiding justices of the several circuits, at the judicial conference held in 1925 under the Act of September 14, 1922, recommended to the judges of the several districts that they should be particular in these wholesale prosecutions for conspiracy, to see that the testimony showed "a serious and substantially continued group scheme for co-operative breaking of such laws, and said that they made that recommendation because they observed that "so many conspiracy prosecutions do not have this substantial base." And further that "the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant." This recommendation is found stated in *United States v. Eissenbunger et al*, 16 Fed. (2nd) 816.

It will be seen that the special instruction No. 158 copies the recommendation of the judicial council ver-

batim. We can see no reason why the instruction should not have been given. It would not have been misleading to the jury, and so far as the instruction related to the possibility of prejudice to defendants arising from the nature of conspiracy prosecutions, it was the exact language of the judicial council, and it seems to us perfectly proper that the caution should be given to the jury inasmuch as the judicial council had stated as a fact that it was likely to lead to the perpetration of injustice. But, if we are in error about that, then we submit that Specification of Error No. 157 states the rule in a perfectly unobjectionable manner, and one within the apprehension of jurors, and that that instruction, at least, ought to have been given by the court.

Assignment of Error No. 165:

This specification relates to the special instruction asked as follows:

“The accused are competent witnesses for themselves in this case under the laws of the United States. Their credibility may be affected by their interest in securing an acquittal, but aside from that fact, they stand on the same footing as any other witness in this case in the matter of credibility. Their manner and demeanor in testifying, their apparent prejudice, or bias, their fairness and consistency in testifying, and their interest in testifying, are all factors proper to be con-

sidered in weighing the credibility of their testimony, to the same extent as the same factors are to be considered in weighing the testimony of any other witness. And after weighing the testimony of the accused in the manner stated you believe him to be more credible, better entitled to be believed than the witness or witnesses for the prosecution, then if the conflict in the testimony be as to a material matter in the case, you are entitled to believe the accused in preference to the prosecuting witnesses, and may find your verdict on such belief."

We submit that it was error to refuse the instruction. The only testimony against either of the defendants was as to alleged conversations had by them with certain witnesses who were thoroughly discredited—convicted and confirmed bootleggers, who had been tolled into the service of the government as undercover men by pecuniary rewards, drunkards, gamblers and whoremasters, and all round bums, and these witnesses were overwhelmingly impeached as unworthy of belief. Weniger and Bloom, on the other hand, were men of character and standing, as testified to by a large number of the best men in the County of Shoshone, Idaho.

It was proper to bring the contrast between the defendants and their accusers to the test by the direct instruction asked. The general charge of the court did in a manner state the law on the subject, but

without making it specific as to the only defendants to whom it could have application, and stating the law in very general terms.

The court will see the importance of the matter when it recurs to the testimony in connection with the motion to dismiss as to the defendants for want of testimony to connect them with the alleged conspiracy.

Respectfully submitted,

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No. 6168

IN THE
**United States Circuit Court of
Appeals**
For the Ninth Circuit

R. E. WENIGER and CHARLES BLOOM,
Appellants,
vs.
UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLEE

*On Appeal from the District Court of the United
States for the District of Idaho.
Northern Division.*

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Counsel for Appellee.

Filed....., 1930.

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.....Clerk.

W. F. GIBSON,
Clerk

No.....

IN THE

**United States Circuit Court of
Appeals
For the Ninth Circuit**

R. E. WENIGER and CHARLES BLOOM,
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STATEMENT

Since the statement of appellants is largely argument, and fails to outline the story of the case as developed by the evidence, appellee is required to make the following detailed statement that the court may have in mind the facts.

An indictment was returned by the grand jury charging appellant Weniger, who was sheriff of Shoshone County, Idaho, at the time of trial, and since January 1923 (Tr. 680), appellant Bloom, who was deputy sheriff of said county at the time of

trial and since Jan. 1923 (Tr. 726) and Joseph Florin, Harcourt Morphy and F. O. Welch, former chiefs of police of the village of Mullan, Shoshone County, Idaho, Elmer Olson, Arthur J. Harwood, John Wheatley, Clarence McMurray, Charles Ristau, Henry Foss, and George Huston, present or former members of the Board of Trustees of said Village, and 32 others, with conspiracy to violate the National Prohibition Act relating to the possession, transportation, sale and manufacture of intoxicating liquor, and the maintenance of liquor nuisances in the Village of Mullan, Shoshone County, Idaho. The conspiracy was charged to have originated on or about Feb. 1, 1924, and continued thereafter to the return of the indictment. Thirty overt acts were set out in the indictment, to the effect that defendant members of the Village Board voted for Ordinance No. 105, and appointed defendants Welch and Florin police officers, appellant Bloom received money, gave warning of impending raids by Federal Prohibition officers, and drank whiskey in the Mullen Inn; that the various defendants at different times possessed and sold whiskey or beer, and that defendants Welch and Florin at various times delivered to one Martin lists showing payments by persons dealing in intoxicating liquors (Tr. 17-26). Plea in abatement was filed by appellant (Tr. 27-30) answered by the government (Tr. 31) and, after a hearing, denied by the Court

(Tr. 32). Though assigned as error (Tr. 66), this denial is not argued in appellant's brief, is apparently abandoned, and a statement of facts relating thereto is unnecessary.

After entry of pleas of not guilty twenty-nine defendants went to trial on Dec. 16, 1929, and verdict of guilty against the appellants Weniger, sheriff, and Bloom, deputy sheriff, and against the Village Trustees, and police officers who were on trial, and a number of others (twenty-four in all) was returned on December 29, 1929. Judgments were pronounced, from which Weniger and Bloom alone appeal. (Tr. 33-65).

It is not clear from appellant's brief whether appellants deny the existence of any conspiracy as charged, or only deny appellant's connection with an admitted conspiracy. However, the evidence shows:

The Village of Mullan, Shoshone County, Idaho is a Mining Community of about 3000 people, with a small business district of one or two streets, one block long. It is seven miles from Wallace, the County seat, where the Sheriff's office is located, and 69 miles from Coeur d'Alene, Idaho, the station of the two Federal Prohibition Agents whose jurisdiction extends over the five northern counties of Idaho, including Shoshone County. From Coeur d'Alene to Mullan, these Agents would have to pass through Wallace, (Tr. pp. 188, 196, 240-241, 433, 456-457, 460, 478, 590, 697, 702).

Two of the defendants, Harwood and Olson were, at the time of the origin of the conspiracy, Village trustees, together with three others now dead (Tr. 324, 418, 600), and continued as trustees throughout; defendant Wheatley became a trustee in 1925, and defendants Foss, Huston, and Ristau became trustees in 1927, all continuing thereafter as such during the conspiracy, (Tr. 334-338). Defendant Florin was Chief of Police in 1925, 1926, Needham was Chief in 1927, 1928, and Welch, who had been night policeman under Florin and Needham, became Chief in the fall of 1928 and continued until trial. Defendant Morphy was night policeman under Welch, (Tr. 189, 339-341).

Appellants Weniger and Bloom became Sheriff, and Deputy Sheriff, respectively, of Shoshone County, in January, 1923 and continued as such up to the time of the trial. Bloom was known as the Mullan deputy, having lived at that place. He had, prior to State prohibition, been a saloon keeper there, and in Wallace, and served during the six years prior to becoming deputy sheriff, as a policeman in Mullan, being appointed shortly after his conviction for violation of the liquor law, (Tr. 236, 680, 696, 717, 726). There were six deputy sheriffs, all, except one, stationed within a few miles of Mullan, (Tr. 696-697) and Appellant Bloom kept his residence and family at Mullan. Such was the set-up of officials, made defendants in this case, during

the period of the conspiracy, Feb. 1924 to Nov. 1929.

Prior to the conspiracy there was in force in Mulan an ordinance licensing pool halls, soft drink parlors, card playing places and restaurants. The license was nominal—\$16.00 per year, and the proprietor to post bond in the penal sum of \$500.00 conditioned, among other things, that the liquor law would not be violated. (Tr. 319-322; Ordinance No. 103).

Shortly before Feb. 4, 1924 consideration began among the people and Village officers of raising additional money and a general occupation license tax scheme was formulated. Being advised by their attorney that only a regulatory, and not a revenue, license could be charged, rather nominal amounts were fixed for legitimate business—for example, garages, \$16.00 per year, livery stables, \$6.00 per year, hotels, restaurants and laundries, \$3.00 per quarter, barber shops and general stores, \$1.50 per quarter. But places where soft drinks (this is the term used in the ordinance) were sold, either alone or connected with other business, were to be charged \$25.00 per month, or \$300.00 per year in contrast with the charge under ordinance No. 103 of \$16.00 per year, and no bond was required. Made suspicious by this large amount, the Village attorney warned that no attempt must be made thereby to license the sale of liquor, (Tr. 307-317; 416-419, 604). However, a committee of liquor dealers waited

on the trustees and agreed to pay this amount, (Tr. 254, 255) and agreed among themselves for a standard price for liquor—25c for drinks of whiskey and glasses of beer, and for whiskey, \$2.00 per pint. (Tr. 270). That this agreement was lived up to is shown by the buys of liquor made from time to time during the period of the conspiracy. On Feb. 4, 1924, Ordinance 105 embodying the foregoing was passed by the Trustees, (Tr. 324-325) with the “soft drink” license provision designed to license liquor joints (Tr. 193, 236, 327, 544, 547, 609), and repealing Ordinance No. 103.

Harwood operated drug stores in which were soda fountains. He had previously paid the \$16.00 soft drink license, but did not, nor did other legitimate soft drink places, pay the \$25.00 a month license. (Tr. 235, 605-607)

After the passage of this ordinance the Village Clerk made out the licenses, gave them to the then Chief of Police, who collected, and returned, the money to the Clerk, who credited it to the general fund. This method continued until July 1929, and numerous places in the small business district operated for the sale of liquor unmolested, though frequented, by the local police and Appellants Bloom and Weniger, deputy sheriff and sheriff. Mullan was generally known as a wide open town. (Tr. 277, 281, 297-299, 303, 346-347, 397-398, 404, 581, 583, 587, 588).

The license system, however, did not reach all the

handlers of liquor, but only those operating in the business district; nor did it reach prostitution or gambling. Hence, in May, 1925, a system of "volunteer" subscriptions to the village by prostitutes and gamblers, and liquor dealers outside the business district was inaugurated and continued until July, 1929. Each month the Village Clerk made up a paper headed with a recitation of the local tax situation, the need for money for streets, bridges and sewers, and pledging the signers to pay amounts for such purposes. (Exs. 2, 7; Tr. 199-232; 348-390, 397). The then Chief of Police would visit gambling and prostitution houses and beer peddlers, or those thought to be such, and collect from them, turning the money to the Clerk who credited it to the general fund, and reported the collections, and names of subscribers to the Trustees. (Tr. 193, 397)

Needham, once Chief of Police, and Martin, Village Clerk, who testified for the Government, described the system, as it had already become fully established by the time of Needham's appointment. Upon his appointment, he and defendant Welch, then night policeman, later Chief, visited the bootlegging joints; Needham was introduced to the proprietors. They visited the Marble Club, Marble Front Apartments, Coffee House, Bilberg Hotel Bar, Miners Club, Mullan Pool Hall, Mullan Inn, Fern Apartments. (Tr. 189, 239). A day or two later Harwood gave Needham a list of names from whom

to collect; some places he was directed to ascertain whether liquor was sold. (Tr. 190; Ex. 1). He visited the places listed, some of which were gambling joints, collected what the traffic would bear, though generally from \$10.00 to \$25.00 a month from liquor dealers, \$25.00 per month from proprietors of houses of prostitution and \$15.00 from each inmate, and \$35.00 a month from gamblers. (Tr. 192-194). Thus, in addition to license collections, there was collected from Central Hotel (subleased by Harwood—Tr. 610), a gambling and liquor place (Tr. 194, 610), Miners Club for gambling, Miles Cononch, for beer at his home, Mrs. Dalo, Hotel Bilberg for gambling, Mrs. Burns, prostitution, Muckers Club, gambling, Fern Hotel Apartments, prostitution, Lagore, gambling, Mrs. Hall, beer, Josephine Prazza, beer, Mary Morland, beer, Headlund, whiskey, Mullan Inn, liquor, Mon-nic Cabin (also leased by Harwood—Tr. 609-610) prostitution, Yellowstone Cigar Store, gambling, and from time to time others who came and went as liquor dealers, gamblers or prostitutes and whose names or places appear on the monthly lists. (Tr. 194-198; 199-232; 348-390; Exs. 2, 7). Except two subscriptions on the list of May 1, 1927 (Tr. 200), and the additional and separate subscriptions for special police in September to and including December, 1926 (Tr. 364-372, 496), every subscriber was engaged in gambling, prostitution, or liquor dealing, and no persons

engaged in lawful business were asked to subscribe. (Tr. 193-198; 233-237; 255, 260, 414).

The Trustees, while Needham was Chief, offered to pay him a percentage of collections, (Tr. 254) were furnished a monthly list of subscribers (Tr. 238, 393-395; Ex. 10) and in meeting discussed collections, giving the Chief authority to modify payments where business was poor. (Tr. 234, 236, 238, 255, 256, 393) and at least twice arbitrated disputes over payments, (Tr. 198, 235, 241-242; 243-244).

The number of persons and places paying licenses and subscriptions for gambling, prostitution and liquor dealing as appears from the testimony of Needham (Tr. 189-237) and the testimony of investigators, citizens, prostitutes and defendants of the purchase and sale of liquor and government raids (Barron, 422; Johnson, 431-446, 453-455; Webb, 460, 463-464; Collins, 470-472; Morgan, 472-474; Pilan, 474-476; Reed, 476-477; Hesser, 478-479; W. A. McGill, 479; Jewell, 480-482; Cooper, 499-501, 527-531; Sloan, 544-548; Grant, 565-568; Graham, 569; McKinney, 570; Delamo, 573-574; Keyes; 587, 588; Defendants Harwood, 608-611; Anderson, 614-615, 617-619; Speck, 620-623; Pikkerainen, 624-626, 631; West, 632; Gardner 636; Appleton, 637; 638; Arblis, 639; Kennedy, 640, 642; McDonald, 644, 645; Appellant Bloom, 748) shows clearly the wide open conditions maintained unmolested by county and city enforcement officials under the licensing

and subscription systems, and corroborates fully the testimony of Anthony McGill, who is so bitterly assailed in Appellant's brief, in his description of conditions.

McGill, a miner, for a few months in the latter part of 1928, conducted, in partnership with Fond, one of the defendants, and proprietor of the notorious Bilberg Hotel and Bar, the open saloon, the Mullan Inn, from which Federal Agents time after time arrested violators of the liquor laws, (Tr. 260, 433, 454, 458, 460, 463-464, 470-471). He describes conditions while he was in business. "I xx ran an open bar room; sold beer, whiskey and wine openly over the bar. I got my whiskey from the defendant, Fond, at the Bilberg. xxx We got beer in 12 case lots of 24 pint bottles. I never had any trouble with any officers at the Mullan Inn. I paid my license every month. xx Welch (Chief of Police) drank whiskey at my place. At one time he brought me some whiskey from the Bilberg. xx Morphy (Police-man) was in and around my place. xx Charles Bloom, deputy sheriff (Appellant) xx made an occasional visit xx. At any time he came in. I asked him to take a drink and he did. xx I was never interfered with by Bloom. I was assisted by him once. xx He came in the place and told me they (Federal officers) were raiding" (Tr. 260-262) "I have seen Bloom in the Bilberg on numerous occasions, xxx drinks were served while he was there".

(Tr. 262-263). "I seen him (Sheriff Weniger, Appellant) in there on one occasion. xx I was serving the boys drinks back and forth. xx Weniger and several of these campaigners were all in there (Bilberg Bar) drinking". (Tr. 266-268).

"To go in the bar room at the Bilberg you went through a lobby and then into the big bar room; never been changed since the open days. Back of the bar room was another bar room and little wine rooms in there that was used when they had warnings that the federal agents were coming. xx The drinks were served over the bar just as in Alaska or Butte in the early days. I bought drinks from Anderson at the Rockford xx an old time bar. Drinks served over the bar. xx Appelton had a bar at the Central Hotel xx serving drinks over it. xx The Hunters was a hotel upstairs and bar room downstairs xx drinks were served over the bar. xx The Bolo was gambling in front and a bar in the back. xx Joe Florin xx a policeman there for a while xx had the Dew Drop Inn last fall. I bought drinks there. xx Frank Hahn, first at the Miners Club xx was running a bar room, an open bar. xx Hartley (was in) the Smokehouse, a bar room with drinks served over the bar. xx Kennedy xx had a little table in the back where you could sit down and get a drink. xx Babe Kelly xx was hooking xx upstairs over where the Rockford used to be xx the Coffee Shop was a sporting shop xx Normile xx ran a saloon and sold drinks

over the bar. xx Pikkerainen xx was Frank Hahn's partner in the Rockford and Marble Club xx handling liquor. xx Joe Speck was with Hartley xx just a bar xx. Fern apartments xx was a hook shop. I got drinks there. Wilcox xx in the Bolo xx bartender. xx Aggie West was handling beer. xx You played poker at any time you wanted to. xx While I was running the Mullan Inn there was only one time the places were molested by the sheriff or police officers of Mullan. It was over Frank Hahn's refusing to pay a license. xx I was never molested." (Tr. 270-275)

"Anybody could walk in and see what was going on. When Prohibition agents came we would have warning. xx The sheriff's force and police let us know. xx Bloom on one occasion, (and) notified a few times it was dangerous and Welch communicated with me that there was danger and that the Federal men were in town, and to get the stuff out and lock up xx. I got warning several times before the federal men came. (Tr. 278)

"Q. What other places did you go besides the Bolo and the Bilberg?

A. Well, starting at my place (Mullan Inn) you go next door to the Coffee Shop xx and you can get a drink, and then on down the street to the Hunter Hotel and cross the street and go down one block to the Miners' Club. You come back the same side of the street, past the Cumberland Hotel and the

Victor Hotel, and then you come to the Smoke House and you can get all you want there, and after that the Coffee Shop and you can get all you wanted there until the time they closed up. The Central—you walk down to the Central—that was padlocked during my time, then you cross over to Headlund's and get a drink there. Then you can go to the Rockford and get a drink there, and then you come up around to the Lagore's, the Dew Drop Inn, and the next place would be the Bolo, and the next place would be the Bilberg." (Tr. 281).

"The town was wide open. Just as wide open as Alaska xx in 1910 xx. The only difference is you have to pay a little more for your drinks and you do not get good stuff like you use to. xx The only time it would be tightened up a little bit would be when the Federal officers were around. Anybody could come in and get a drink. Any stranger could walk along the street and observe a place where liquor was being sold and people drinking in there and they could smell it on the sidewalks. xx Going up and down the main street of the town a person could look into some of these places and see liquor being dispensed. You could at the Mullan Inn that I was running. xx You could stand right across the street from the Bilberg and see them lined up and drinking. xx The Chief of Police Welch was a regular patron of my place." (Tr. 297-299).

Deputy Bloom was in the place while they were operating, The Bolo, Bilberg, Mullan Inn, Mullan

Pool Hall (Tr. 236-237, 246, 261), was frequently in Mullan, drinking beer and whiskey (Tr. 245, 253). Chief Needham, and policeman Morphy frequented the places (Tr. 261). Bloom warned of Federal raids (Tr. 261-262, 272, 284-285, 292, 294), and worked with bootleggers for Weniger's election (Tr. 263-265), and was paid money by McGill while the latter ran the Mullan Inn. (Tr. 266, 285-287, 304). Sheriff Weniger was in the Mullan Inn, and the Bilberg while drinking was going on, (Tr. 266-268, 282, 283-284) and after McGill had given an affidavit to government investigators Weniger sent his deputies Bloom and Chapman to McGill's Hotel after him. When taken to the sheriff's office, Weniger charged him with telling that he (McGill) was making beer for the Elks, accused him of stooling and helping the government men out—said the heads of the companies made him have these places run wide open, and told him to stay out of the joints (Tr. 268-270, 282-283), though while running his liquor joint, McGill was never molested (Tr. 275). In August, 1928, Chief Needham and policeman Welch were instructed to keep the drunks off the street, because the governor was going to visit Mullan (Tr. 303-304, 305). Shortly after Barron had reported Mullan liquor violations to Federal officers he was arrested by Weniger and Bloom for assaulting one of the women from whom he purchased. A half hour later Johnson and Webb, federal prohibition agents,

happened to come to the jail, and Weniger told them he had their federal stool pigeon, and that he wished they would stay out of his county as he could look after it better without their help. Barron kept a note book record of his purchases of liquor, and this Weniger took and examined and advised Barron he should not stool on these people and threatened to deport him to Canada. Needham was there also. (Tr. 422-424). Barron pleaded guilty to assault, because the jail prisoners were allowed to beat him up, and Weniger promised he would be let off with a \$10.00 fine, otherwise he would put him in State prison, (Tr. 425, 427, 430).

When federal raids were made in Shoshone County in August, 1929, the prohibition agents had two Kootenai County, Idaho deputy sheriffs assisting them. Neither Weniger nor his deputies assisted, and Weniger objected to the presence of deputies from other counties, (Tr. 446-447). For a short time in 1927, Prohibition Agent Johnson was stationed at Wallace and asked Weniger if he could get a little help if he needed it. Weniger told Johnson he (Weniger) had all he could handle without doing anything on Prohibition, that his deputies were under bond and that if they went out the agents might shoot someone and he would get in trouble. Weniger never gave assistance in liquor cases in Shoshone County, (Tr. 448). While raiding, at times the telephone would ring, the agent would

answer and be told to get out, that the Federals were coming, (Tr. 457, 458). In 1924 Weniger told Agent Webb that he had been elected by the wet element and didn't choose to do any work along the enforcement line, (Tr. 462, 466).

In April and June, Cooper, as undercover Agent, and Rogers, special investigator, were in Shoshone County making investigations which, in part, led ultimately to the indictment. Cooper bought liquor at various places in Mullan and Wallace (Tr. 499-502, 527-528; 531) during which Morphy, night policeman, inquired, in one of the places, if he was a Federal stool pigeon, and required him to empty his pockets. On June 15, their secret work was practically completed. That morning Weniger came to their hotel, accosted Rogers and Cooper and demanded their identity, stating he was investigating the issuance of bad checks. Their identity as Government Agents disclosed to Sheriff Weniger and Deputy Bloom, they were allowed to return to the hotel, and Rogers, in ten or fifteen minutes sent Cooper out to see if he could buy liquor as he had been able to do the night before and previously, (Tr. 502-503, 522-523; 532-534, 542). He visited several places in Wallace where he had bought liquor before, and was unable to buy. He then proceeded to Mullan and was likewise unable to buy there, (Tr. 504-514, 524).

In August, 1929 Bloom called upon one McCreary

in Mullan and complained of gambling. McCreary said: "The town has been running free and wide open for the past few years; they are running whiskey joints, they are selling whiskey over the bar in several places . . . Why don't you go out and close these places up?" Bloom said, "I am not running the County. I have got to do as I am told." The next morning Weniger and Bloom visited McCreary's father and told him his son had got sassy and "you will have to stop that or we will take him down and if we take him down it will be too bad for you and him both." (Tr. 549-554) Bloom told the McCrearys to close up, clean the place up as he had found out that the federals were going to come in. (Tr. 557)

Defendant Anderson was arrested by Federal officers but not molested by Village officers or the Sheriff (Tr. 617). Defendant Speck was arrested by Federal officers, convicted and confined in Sheriff Weniger's jail; afterward returned to the liquor business in Mullan, and again arrested by Federal officers, but was not molested by Village officers or sheriff Weniger, (Tr. 620-623, 703). Defendant Pikkerainen dealt in liquor, was arrested by Federal officers, served time in Sheriff Weniger's jail, returned to the liquor business in Mullan, and was re-arrested and convicted by Federal officers, but never, except in 1925, molested by Village or County officers. (Tr. 624-631, 702). Federal officers alone ar-

rested Defendant Gardner for liquor violations at Mullan. (Tr. 636-637). So also Defendants Appleton (Tr. 637-639), Arbliss (Tr. 639), Kennedy (Tr. 641-642), Babe Kelly (Tr. 644), Mona McDonald (Tr. 645).

The enforcement of liquor laws by the Sheriff became progressively less—in 1925 he had 25 or 26 cases in the whole county; in 1926, nine; in 1927, five, in 1928 and until after a series of raids by Federal officers in August, 1929, none at all. He did not testify that a single case at any time was made in Mullan—yet he knew during all this time Federal officers were constantly discovering violations in the County, and made as many as 150 cases (Tr. 698-701). He knew Federal officers continuously raided these places in Mullan, that they continued to operate, but he made no investigations, (Tr. 703). Notwithstanding the notorious conditions, and that he claimed to be constantly looking for liquor violators, in 1928, he says he never ran across anybody. (Tr. 705). During the years he was officer he was in Mullan two or three times a month (Tr. 697). The attitude of Sheriff Weniger and Deputy Bloom toward the notorious Mullan conditions is illustrated by Bloom's testimony of indifference, Transcript pages 728-748, and Weniger's statement to the United Press correspondent during the course of the trial:

“The reason that I am in this jam with the Federal authorities is that during my term of office as Sheriff of Shoshone County, I have steadfastly refused to cooperate with the Federal dry agents and would not allow myself and men to become stool pigeons for the Prohibition officers. For the last year Shoshone County has been overrun with undercover agents of the dry forces until it is now impossible for a stranger to enter the boundaries of the county without being placed under suspicion.” (Tr. 757).

The Village trustees, as a body, were advised by the Village attorney that the practice was illegal; again in 1927 certain of the trustees were told by the attorney that if collections were being made from everyone engaged in an unlawful business, it was unlawful and should be stopped. They stated that as they were not personally profiting they thought there was nothing wrongful about it, and did not consider that the Federal Prohibition officers intended to disturb the situation, and they were merely expressing the wish of the community. (Tr. 419-420, 595, 611-612). Later, about July 1, 1929, the Attorney advised the Clerk that the Government was investigating and the practice should be stopped. The Clerk conveyed the advice to the trustees and thereupon licensing and subscription taking was ordered stopped. (Tr. 397-401).

ARGUMENT

We shall group for discussion the contention of appellants, pages 16-34 of their brief, and the assignments of errors, Nos. 149 and 150 (Tr. 134-135), argued on pages 92-108 of appellant's Brief.

When they say, "Our contention is that the United States cannot found a criminal prosecution in whole or in part on an official act of a state or any instrumentality of a state and that where that is attempted, the Federal Court in which such prosecution is brought, is without jurisdiction to proceed", we think the appellants utterly failed to understand the indictment. Weniger and Bloom, together with the other defendants, were not indicted for conspiracy to pass an ordinance of the Village of Mullan. They were indicted for a conspiracy to commit violations of the National Prohibition Act.

We concede that the trustees had the power to pass ordinance No. 105. That ordinance on its face is apparently legal, and innocent, and we do not question that it is constitutional. It is the use made of the ordinance of which the government complained—we contended that Section 11 of the ordinance (Tr. 312) was a subterfuge passed and used for the purpose of illegally licensing the sale of intoxicating liquor under the guise of "soft drink" businesses. The conspiracy in this case was originally among the bootleggers themselves who committed the substantive offenses against the National

Prohibition Act, and the officials of the Village of Mullan joined that conspiracy, just as the members of the sheriff's office did. The officials of Mullan furthered the conspiracy by certain means, among others of which was the passing of ordinance No. 105, under which the officials licensed and collected money monthly from saloons under the guise of "soft drink" businesses, collecting monthly from beer sellers, prostitutes and gamblers, without issuing a "soft drink" license, and the sheriff's office aided the conspiracy by assisting the bootleggers to violate the National Prohibition Act. No complaint was ever made in this case of the officials of Mullan in either passing or having the power to pass ordinance No. 105. It was and is the use of that ordinance as a subterfuge to illegally collect money from, and granting immunity to, and assisting in the substantive violations of the National Prohibition Act by the bootleggers, of which the government complained, and it was the active, affirmative assistance by the members of the sheriff's office given the bootleggers themselves that made Weniger and Bloom co-conspirators.

The great definitive decisions of which *McCullough vs. Maryland*, and *Osborne vs. Bank of United States*, are illustrative, have no application here. We willingly concede that the government of the United States and the governments of the several states are each supreme within the limits of their

respective powers, but where their powers come into conflict, those of the general government must prevail.

The Government did contend in this case that where a State Prohibition Statute imposes a duty of enforcement on an officer, and that officer purposely did nothing in his office to enforce such statute, and at the same time knew of the open and continuous violations of prohibition laws, which acts were also violations of the Federal Prohibition Statutes, that this mere negative attitude on the part of such officer might become an affirmative act in furtherance of the conspiracy to violate the Federal Prohibition Statute, for if such officer knew of the conspiracy to violate the National Prohibition Act and purposely failed to perform his duty to prevent violations or apprehend violators of the State Prohibition laws, who were also violators by the same acts of Federal Prohibition Laws, this mere purposeful failure to perform his duty under the State Statute was a necessary circumstance to the continuance of the conspiracy, and gave aid and assistance to its continuance and success, and such officer thus assisting in such conspiracy by such conduct, became a co-conspirator:

Burkhardt vs. U. S., 13 Fed. (2d) 841.

This proposition is consistent with the principles announced in *Gambino v. U. S.*, 275 U. S. 310, to the

effect that state officers were under no obligation to enforce the National Prohibition Act.

It was not "the theory of the court all through the trial that the failure on the part of the state officers to enforce the state laws was sufficient to connect them with the conspiracy to violate the laws of the United States" (Appellant's Brief, p. 94). Neither was that the position of the Government. Judge Webster's charge correctly stated the law in this regard:

"Mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose." (Tr. 776)

Then continuing with respect to Weniger and Bloom:

"These defendants are not on trial for a mere failure to enforce the prohibition laws, state or national, in the village of Mullan or in the county of Shoshone. These defendants are not accused of acts of omission but of commission, namely, that they entered into the conspiracy described in the indictment to violate the prohibition laws of the United States in the particulars set forth in the indictment.

"But, gentlemen of the jury, in this connection I instruct you that where individuals are the occupants of a public office or offices and

whose duties in whole or in part require of them the enforcement of the liquor laws and the arrest of those engaged in such law violation, and it is made to appear that within the jurisdiction of such offices, such laws are openly, notoriously and continuously violated in such manner and under such circumstances that the jury is satisfied beyond all reasonable doubt that such peace officers *in fact knew* of such flagrant, open and continuous violations, if you find there were such, and that such officers did little or nothing to enforce the laws that were being violated by arresting those engaged in their violation, these are facts and circumstances which you have a right to take into consideration together with all the other facts and circumstances disclosed by the evidence in the case as shedding light on whether or not such peace officers, or any of them, *actually joined* the conspiracy charged in the indictment *and aided and permitted* its execution. In such circumstances you should inquire whether such acquiescence in such law violation, if you find there was such, was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers, or was the conduct passive and *intentional with full knowledge of a conspiracy to bring about such violation* and was passed *with a view and for the purpose of protecting and aiding it*. In other words, was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from performing the duty with

the knowledge of the violations *for the purpose of aiding and assisting in the conspiracy* to violate the laws which were being violated?

“Mere lack of diligence in the performance of their duties on the part of public officers is not enough. There must in addition be proof of *knowledge of facts showing an intention* on the part of the officers in question *to aid in the unlawful act by refraining purposely from doing that which they were by the duties of their office bound to do, with the intent and for the purpose of becoming a party to and aiding in the execution of a conspiracy to violate those laws.* This you must determine by your verdict in the light of all fact and circumstances disclosed by the testimony in the case.” (Tr. 779) (Italics ours.)

It is not true that “this conspiracy was attempted to be shown by acts which were a crime under the laws of the State of Idaho, and it was attempted to sustain those acts as proof of the conspiracy charged on the ground that the general evil intent might be found in the purpose to commit crime,” (Appellants’ Brief, p. 95), for every sale of whiskey, every sale of Beer, and every nuisance maintained as shown in the evidence was a direct violation of the National Prohibition Act. It is true they also were violations of the State Prohibition Laws.

All through their argument, Appellants have failed to recognize that the 18th Amendment has

changed the relations of the State and Federal Governments in the prohibition field.

Appellants say (Brief, p. 106) :

“If the licenses issued by the government of the United States to sell liquor in states where the sales of liquor were forbidden ‘simply expressed the purpose of the government not to interfere by penal proceedings with the trade nominally licensed,’ then the converse must be true that the action of the authorities of the village of Mullan in licensing sales of liquor therein must also simply express the purpose of the village not to interfere by penal proceedings with the trade nominally licensed, and if the United States might do that without violating the prohibition law of the state, then clearly the state or any of its instrumentalities may do the same thing without violating the prohibition law of the United States.”

The converse of the condition obtaining in the License Tax Case (5th Wall, 72 U.S. 462) might be true provided the constitutional situation were the same, but since the 18th Amendment the Federal Government could not constitutionally license as they did at the time of the License Tax Case. Today neither the Federal nor State Government could so act, for the 18th Amendment, binding on both governments, prohibits the thing that was then legally licensed. Again we say, in this case, the question of two sovereignties in each state is not in point, for by the 18th

Amendment the states have surrendered to the Federal Government a power theretofore retained.

“6. The first Section of the Amendment—the one embodying the prohibition—is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act—whether by Congress, by a state legislature, or by a territorial assembly—which authorizes or sanctions what the section prohibits”:

National Prohibition Cases, 253 U. S. 350 at page 386.

To recapitulate, the Government did not complain of a gesture of trustees of the village of Mullan in passing ordinance No. 105, which on its face is legal. It was the subterfuge in the ordinance of which we complained. The Government did show as evidence that the subterfuge employed in ordinance No. 105 was merely a part of, or incident in, the general scheme to obtain money illegally from the practice of prostitution, the conduct of gambling and the violations of the liquor laws, by granting an immunity to such violators in exchange for the monthly payments into the village treasury, and that these acts were properly admissible as tending to establish that the defendants, who in this case were also trustees of the village of Mullan, were participating in, and were members of the conspiracy charged in the

indictment, to-wit, a conspiracy to violate the National Prohibition Act in various regards.

Appellants' argument that the evidence touching gambling and prostitution was immaterial and prejudicial, was answered by Judge Webster in his charge to the jury (Tr. 778-9):

"I charge you, however, that the only object of the claimed conspiracy in this case over which the United States and its courts have any jurisdiction is the one set forth in the indictment, namely, *a conspiracy to commit violations of the National Prohibition Act*. A conspiracy with respect to gambling or prostitution, or any of the ordinary forms of municipal vice, if confined to such places, would not be a conspiracy to commit an offense against the United States, for the reason that the United States and its courts have no jurisdiction with respect to gambling, prostitution and municipal vice.

"The only object of the claimed conspiracy which you may take into account in arriving at your verdict in this case is the object alleged in the indictment, namely, that the parties conspired to violate the National Prohibition Act in the respects enumerated and set forth in the indictment.

"The testimony in this case with respect to gambling and prostitution in the village of Mullan was admitted because it was so interwoven with the charge of violating the laws of the United States, namely, the prohibition laws, that it was competent for you to take it into

consideration in connection with all the other facts and circumstances disclosed by the evidence in the case as shedding light on the question of whether there was a conspiracy to violate the prohibition laws, if in your judgment such evidence has any such effect."

The theory of the Government in this case was that gambling, prostitution and bootlegging were so inextricably involved that the evidence touching upon gambling and prostitution was necessarily introduced in putting in the evidence on bootlegging.

"The general rule is unquestioned that, when a defendant is put on trial for one offense, evidence of a distinct offense unconnected with that laid in the indictment is not admissible. *Smith v. U. S.* (C. C. A.) 10 F. (2d) 787; *Crowley v. U. S.* (C. C. A.) 8 F. (2d) 118; *Terry vs. U. S.* (C. C. A.) 7 F. (2d) 28; *Paine v. U. S.* (C. C. A.) 7 F. (2d) 263; *Heitman v. U. S.* (C. C. A.) 5 F. (2d) 887. While this is the general rule, the exceptions are so numerous that it has been said: 'It is difficult to determine which is the more extensive, the doctrine or the acknowledged exceptions.' *Trogdon v. Com.*, 31 Grat. (Va.) 870; *State v. Baker*, 23 Ore. 443, 32 P. 161. It does not apply where the evidence of the other offense directly tends to prove the crime charged in the indictment, or when a complete account of the offense charged and the defendant's connection therewith cannot be given, without disclosing the particulars of such other acts, or when it is so con-

nected and intermingled with the crime charged as to form one entire transaction, and proof of one involves proof of the other.

“Evidence which is relevant is not rendered inadmissible because it proves or tends to prove another and distinct offense. *Astwood v. U. S.* (C. C. A.) 1 F. (2d) 639; *McCormick v. U. S.* (C. C. A.) 9 F. (2d) 237; *Tucker v. U. S.* (C. C. A.) 224 F. 833; *Lueders v. U. S.* (C. C. A.) 210 F. 419. Thus it is said, in *Rex v. Bond*, 2 K. B. 389, quoted with approval in *Astwood v. U. S.*, supra: “The general rule cannot be applied where the facts which constitute the distinct offenses are at the same time part of the transaction which is the subject of the indictment. Evidence is necessarily admissible as to acts which are so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible.”

Johnston v. United States, 22 F. (2d), 1 p. 5.

See also:

Kaplan v. U. S., 7 F. (2d) 594;

Allen v. U. S., 4 F. (2d) 688.

The exhibits and testimony explanatory of them show the condition existing here as required in the *Johnston* case, supra (Tr. 190, 199-232, 348-390, 192-198, 346-347), for the very lists of collections

show gamblers, prostitutes, and bootleggers intermingled.

The complaint of appellant about the cross-examination of Bloom, ignores the real point that we were trying to show—*knowledge* of the open violations of the National Prohibition Act, and credibility of Bloom in connection with the conditions existing of open violations of the liquor laws in the places where Bloom was physically present. The Bilberg Hotel ran an open bar (Tr. 284, 197), and if Bloom said he saw card playing without knowing whether the players were gambling, he would likely say the same thing about the drinking at the bar without knowing what was being consumed, and would purposely make no attempt to find out.

The testimony set out, pages 41 and 42, Appellants' Brief, shows directly that Bloom, a Deputy of Weniger, was in direct contact with a bootlegger who was operating an open saloon, the Mullan Inn, and used McGill and his car to assist in the election of 1928. We knew of no better way to show knowledge, association and a working agreement between the officers and law violators, and hence its materiality. That it was not prejudicial, if error, is conceded by appellants. (Pages 43, 89, Appellants' Brief).

The question asked under assignment of Error No. 17 (Tr. 74), was manifestly improper. It does not contain the elements necessary in a question for

impeachment—the name of the person, the place, and the time were all necessary. If it was not an impeaching question, appellants would have been bound by the answer. They could not otherwise test the credibility of the witness. The Court was willing to allow a properly framed impeaching question (Tr. 297), and counsel evidently accepted the view, that the question was intended to impeach, since he did not express any view otherwise at that time. It was manifestly unfair to the witness.

Assignment of Error No. 20 (Tr. 77), discussed on page 34 of Appellants' Brief, covers Exhibits 5-A (Tr. 323), and shows the action of the Village Board in passing ordinance 105. It is not the ordinance itself.

Assignments of Error Nos. 58 to 96 (Tr. 100 to 112), concerns the testimony of Government Agents Cooper and Rogers, which was offered as a circumstance from which it could be inferred that the Sheriff's office disclosed to the bootleggers the investigation of the Agents so that they were, immediately after the conference with Weniger, unable to buy liquor in places where they had been buying before.

Counsel's statement (Brief, page 48) that "On cross-examination he (Cooper) admitted he thought they had been uncovered around the 13th of June, two days before the interview with Weniger" (Tr. 521) simply is not true. Cooper said (Tr. 521), "I was not having any difficulty before the 15th. I was

not having difficulty in buying stuff before getting into trouble with Weniger.”

The fact that the Agents could not buy liquor in Wallace after the conference is no indication that the Government was trying to show conditions outside of Mullan, but this was part of the fact that they could not again buy liquor in Mullan, and tended to show that Weniger was assisting the bootleggers. The unsuccessful attempts of Cooper to buy liquor within fifteen minutes after the conference with Weniger is such a close relation in time and place, that the testimony was relevant. The weight, of course, was for the jury. It was the fact that their identity was not disclosed, despite the officials being advised by Rogers, and that they did buy liquor up to the time of the conference with Weniger, that permitted the jury to infer that Weniger disclosed their identity to the bootleggers.

Assignment of Error No. 145 (Tr. 129).

We have made a full statement of the case, and this shows Weniger's connection with the conspiracy. Pages 60 to 67, Appellants' Brief, are largely an attempt to discredit McGill's testimony, but his credibility was for the jury. The alleged impeachment consists largely of denials of certain incidents by defendants Bloom, Fond and Malloy. We submit that the bootlegger defendants who paraded to the witness chair corroborated in part the testimony of McGill:

Anderson, Tr. 614; Speck, Tr. 620; Pikkerainen, Tr. 624; West, Tr. 631; Thompson, Tr. 635; Gardner, Tr. 636; Appelton, Tr. 637; Arbliss, Tr. 639; Kennedy, Tr. 640; Kelly, Tr. 643; McDonald, Tr. 644; and the jury convicted all of them in this case. McGill cannot be dismissed with the gesture that he was so thoroughly impeached that his testimony was worthless for any purpose (Appellants' Brief, page 84), for his testimony is sufficient when the jury believes it.

“That a conviction may rest upon the uncorroborated evidence alone of an accomplice is now well settled.”

Hass v. U. S., 31 F. (2d) 13, at page 14.

In resume, this record shows that Weniger was sheriff of Shoshone County from 1923 to time of trial, December, 1929 (Tr. 680), and at all times had knowledge of the liquor violations detailed in the evidence, and knew many of the bootlegger defendants (Tr. 694-701-703), and yet he made no arrests for liquor violations from October, 1927, to August, 1929, during which time the Federal agents made in Shoshone County 150 cases (Tr. 701), and this despite Weniger's refusal to cooperate or assist the federal agents (Tr. 446-448; 462-66). Furthermore, knowing of the conditions in Mullan, he was in the Mullan Inn while the liquor was being served over the bar (Tr. 266-267) and drank liquor at the bar in the Bilberg Hotel (Tr. 284). But not content with permitting bootlegging to flourish, he at-

tempted to coerce McGill into silence, accused him of "stooling for the Government" (Tr. 269-270, 282), and exposed the Government agents, Rogers and Cooper, to the bootleggers (Tr. 523), and took Barron's notes of evidence of purchases of liquor from violators in Mullan, which was for use of the Federal Agents (Tr. 423), and threatened to get Barron out of the country, and also threatened Earl H. McCreary and his father, H. W. McCreary, with arrest if they didn't stop talking of the open liquor selling in Mullan (Tr. 550 to 554).

Counsel's statement, Brief p. 79, is most significant and gives the underlying reason for the very condition existing of which the Government complained in this case. In speaking of the statement given by Weniger to the newspaperman, Ray Sheridan, (Tr. 757 and 758) they say "the interview testified to by Sheridan represents fairly the attitude of Mr. Weniger concerning Federal enforcement in Shoshone County." Given that attitude toward the prohibition laws and his desire to stay in his office, the fertile field was available for the seeds of this conspiracy to flower.

Counsel then argues, Brief, p. 83, that there is no evidence to go to the jury, but they ignore the evidence hereinbefore discussed.

This court does not concern itself with the weight of conflicting evidence,—only whether there is sufficient evidence to warrant a conviction:

Driskill vs. U. S., 24 F. (2d) 413;

Allen vs. U. S., 4 F. (2d) 688.

Assignment of Error No. 146 pertains to refusal of the court to direct a verdict for Bloom. Again they advert to McGill and attempt to talk out of the record, the bribery of Bloom, his warning that the prohibition agents were coming, his assistance of McGill in disposing of liquor, and his drinking in the Mullan Inn (Tr. 260-262), and his attempt to coerce the McCrearys into silence concerning the liquor conditions in Mullan (Tr. 549-554). Again we refer to our statement of the case for Bloom's place in this conspiracy.

Appellant's requested instruction covered by Assignment No. 153 (Tr. 138), was in substance given by the Court (Tr. 779). Likewise was assignment No. 155 (Tr. 139; Tr. pp. 776 and 779):

Kettenbach vs. U. S., 202 F. 377.

Assignment No. 154 (Tr. 140) covers two questions and attempts to say what the law of search and seizure has been since March 26, 1927. There is nothing in the record on which to predicate this instruction (Tr. 683).

The Constitution of Idaho was adopted July 3, 1890. Article 1, Section 17, reads:

"Sec. 17. Unreasonable searches and seizures prohibited. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall

issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.”

and has, since statehood, been the law of Idaho. Additionally, the instruction unduly emphasizes a part of the testimony, to-wit, that of Weniger (Tr. 685, 712).

“When a requested instruction contains several propositions of law, one of which is unsound, refusal to grant the request is not error.”

Timell vs. U. S., 5 F. (2d) 901.

Gin Block Sing vs. U. S., 8 F. (2d) 976.

Baugh vs. U. S., 27 F. (2d) 257.

Requested instructions covered by Assignments Nos. 157, 158, and 165 were in substance given by the court (Tr. 774, 787).

N. G. Sing vs. U. S., 8 F. (2d) 919;

Meadows vs. U. S., 11 F. (2d) 718.

While the books are full of municipal vice cases, and cases involving officials for grafting moneys through their official positions, we submit that the books do not contain a case analagous to the instant one, in that all of the officials concerned seem to have a moral blind spot precluding them from seeing the effect of and duties imposed by the prohibition laws, both state and federal. This case seems to us to be in its larger aspects, a question involving good citizenship, and that if the acts complained of in this case are permitted to stand, the precedent estab-

lished would become a criterion by which state and municipal enforcement officials could circumvent and defeat in large measure, the Federal Prohibition Laws.

We confidently assert that the record does not disclose any prejudicial error concerning any defendant, either those appealing, or those accepting the judgment of the court, and that the eminent jurist who tried this case gave the defendants a fair trial on the charges preferred in the indictment. Because of this, the judgment should be affirmed.

Respectfully submitted,

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IN THE

**United States Circuit Court of
Appeals
For the Ninth Circuit**

R. E. WENIGER AND CHARLES BLOOM,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHEARING

*On Appeal from the District Court of the United
States for the District of Idaho,
Northern Division.*

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Filed....., 1931.

FILED
MAR 16 1931

.....Clerk.

PAUL P. O'BRIEN,

CLERK

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PETITION FOR REHEARING

*On Appeal from the District Court of the United
States for the District of Idaho,
Northern Division.*

PETITION FOR REHEARING

Comes now the appellee in the above entitled cause and respectfully petitions the court for a rehearing of this case and for a setting aside of the opinion of the court in said case filed February 24th, 1931, upon the following grounds and for the following reasons, to-wit:

I

The opinion states:

“The evidence, in our opinion falls short of showing that the particular conspiracy which was organized by the city officials of the village of Mullan was joined in by these appellants.”

A reading of the opinion of the court indicates that perhaps the theory of the government as to the conspiracy, and of the connection of Sheriff Weniger and Deputy Sheriff Bloom therewith, in this case was not made clear, inasmuch as it is not discussed or even referred to. On page 28 of our brief in chief we said:

“The government did contend in this case that where a State Prohibition Statute imposes a duty of enforcement on an officer, and that officer purposely did nothing in his office to enforce such statute, and at the same time knew of the open and continuous violations of prohibition laws, which acts were also violations of the Federal Prohibition Statutes, that this mere negative attitude on the part of such officer might become an affirmative act in furtherance of the conspiracy to violate the Federal Prohibition Statute, for if such officer knew of the conspiracy to violate the National Prohibition Act and purposely failed to perform his duty to prevent violations or apprehend violators of the State Prohibition laws, who were also violators by the same acts of Federal Prohibition Laws, this mere purposeful failure to perform his duty under the State Statute was a necessary circumstance to the continuance of the conspiracy, and gave aid and assistance to its contin-

uance and success, and such officer thus assisting in such conspiracy by such conduct, became a co-conspirator,"

and this theory of conspiracy was founded upon an expression of the court in *Burkhardt vs. U. S.*, 13 Fed., (2) 841:

"the rule that acquiescence in or failure to prevent a conspiracy or criminal act is not sufficient to render one liable, does not apply in every circumstance to one whose duty it is under the law to prevent the act. His acquiescence may amount to purposeful furtherance; it may be the deliberate removal of an otherwise troublesome obstacle from the path of the law violator and thus become affirmative cooperation."

The only difference in the situations of Weniger and Bloom, sheriff and deputy, and the trustees, Harwood, Ristau, et al, and the local policeman Florin, Welch, Needham and Morphy, was that the activities and purposeful furtherance by acquiescence and failure to perform duties of the latter were confined to the village as their jurisdiction, while exactly the same type of purposeful activity and deliberate failure of duty of the former, with the same knowledge and purpose, was extended over the county, *including the village*. The field of the former was larger, but included the field of the latter—it gave greater opportunity, and made possible that the doing or refraining to do a particular act would be in aid not only of the liquor business throughout

the county but within the village. Thus acts or omissions of the sheriff and his deputy might—and did—assist not only the furtherance of the particular conspiracy in Mullan, but other conspiracies or independent liquor dealers elsewhere in the county. This is illustrated by acts of the sheriff and deputy in the Rogers-Cooper incident where, after disclosure of their official character to the sheriff and his deputy, Cooper immediately thereafter, could not buy liquor either in Wallace or in Mullan at places he had patronized up to the very time of that disclosure to those officials. The logical inference is that this “uncovering” by the sheriff and his deputy reacted to the benefit of the conspiracy in Wallace (which was charged in another indictment and the defendants therein convicted after trial) as well as to the benefit of the conspiracy in Mullan, by preventing or hampering the efforts of the Government in detecting violators of the National Prohibition Act. It doubtless also reacted to the benefit of other liquor dealers who were in the county, but not members of either conspiracy, by effectually removing Rogers and Cooper from further undercover investigation, but that fact would not preclude the act from being also in furtherance of the Mullan conspiracy.

That a conspiracy existed so far as the village officials and the liquor dealers, gamblers and prostitutes of Mullan are concerned was found by a Grand Jury, the trial court, the trial jury, and this court.

It could hardly be denied. Yet the activity and inactivity—the purposeful refraining from action so as to permit violation of the National Prohibition Act and with the obvious intent to encourage it—were no different by the village officials than by the sheriff and his deputy. True, money was collected by the former, but that it was collected was more evidence of unity, of agreement, of conspiracy, than of anything else. The conspiracy was not one to collect money—if it had been the government could not have prosecuted—but its essence was to deal, and permit the dealing, in liquor, the thing prohibited by United States laws, and to gamble, and permit gambling, and to ply the profession of prostitution, and to permit its operation. This also did the sheriff and his deputy, charged by the state laws with the same or even larger, duty than the village officers in suppression of these objects in view of which the words of the opinion that Weniger and Bloom “were outsiders with separate and distinct functions having to do not at all with the local business,” and that the sheriff’s action “applied to all parts of his county, and not in particular to the village of Mullan,” are not supported. Rather it did apply in particular to the village as well as to all parts of the county, for Section 2640, Idaho Compiled Statutes, (a part of the Idaho Prohibition Act) says:

“*Duties of Peace Officers*: It shall be the duty of all sheriffs, deputy sheriffs, constables, may-

ors, marshals and police officers of any city or village, having notice and knowledge of any violation of the provisions of this article, to notify the prosecuting attorney of the proper county of the fact of such violation and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall, upon conviction, be fined in any sum not less than \$100 nor more than \$500, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge forfeiture of such office. For a violation or neglect of official duty in the enforcement of this article, any of the city or county officers herein referred to may be removed in the manner now or hereafter provided by law."

And Section 8314 Idaho Compiled Statutes (part of the anti-gambling statute), reads:

"Officers to enforce law. Every prosecuting or county attorney, sheriff, constable, or police officer, must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do is guilty of a misdemeanor."

which statute has reference to the enforcement of the provision contained in Section 8307, Idaho Compiled Statutes, which reads:

"Gambling: Punishment. Every person who deals, plays, or carries on, opens or causes to be opened, or who conducts, either as owner, em-

ployee, or lessee, whether for hire or not, any game of faro, monte, roulette, lasquenet, rouge et noir, rondo, or any game played with cards, dice, or any other device, for money, checks, credit or any other representative of values, is guilty of a misdemeanor and is punishable by fine not less than \$200 or imprisonment in the county jail not less than four months."

Furthermore, Chapter 209, Idaho Session Laws, 1921, provides:

"That any unmarried person who shall have sexual intercourse with an unmarried person of the opposite sex shall be deemed guilty of fornication, and, upon conviction thereof, shall be punished by a fine of not more than \$300 or by imprisonment for not more than six months or by both such fine and imprisonment; *Provided*, That the sentence imposed or any part thereof may be suspended with or without probation in the discretion of the court."

And Section 3596, Idaho Compiled Statutes, as amended 1921 Session Laws, page 547, provides:

"The sheriff must:

1. Preserve the peace
2. Arrest and take before the nearest magistrate for examination, all persons who attempt to comit or who have committed a public offense. * * * "

The evidence showed that the sheriff and his deputy, just as the local police and trustees, had knowledge of liquor, gambling and prostitution in Mullan, frequented the same places during their illegal activity, gave the same kind of warnings of

threatened interference, failed in the same way to enforce the state law, when enforcement would have prevented or at least hampered Federal violations, condoned the violations, exposed Federal investigators, oppressed persons giving information of Federal violations to Federal officers, and in general, with the intent and purpose of permitting such violations and in furthering and aiding them, threw about the conspiracy a protecting arm.

The trial court instructed the trial jury upon this theory.

“ * * the essential elements of this offense are two: first, the act of conspiring to commit an offense against the United States, and, secondly, the doing by one or more of the parties to the conspiracy of an act to effect the object of the conspiracy (Tr. 773) * *

“ * * A concerted action to violate the law is usually secret and is ordinarily shown by separate, independent acts, each tending to support and establish a common design and purpose on the part of those aiding and participating in such acts. This common design and purpose is the essence of the crime of conspiracy.

* * The jury will be justified in inferring the existence of a conspiracy if the government satisfies you beyond a reasonable doubt by the testimony of credible witnesses that any two or more of the persons named in the indictment aimed by their acts to accomplish the same unlawful purpose or object, one performing one part thereof and the other or others another part of the same, so as to complete it, the acts of each ever leading to the same unlawful re-

sult, although the parties so participating may never have met together to concert the means or to give effect to the unlawful design and purpose. * * (Tr. 775)

“ * * Mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose * * ” (Tr. 776)

(Then, after cautioning the jury that they must find beyond all reasonable doubt, and that circumstantial evidence must be consistent with guilt and inconsistent with every other reasonable conclusion:) * *

“A conspiracy may have a number of objects * * The only object of the claimed conspiracy in this case over which the United States and its courts have any jurisdiction is the one set forth in the indictment, namely, a conspiracy to commit violations of the National Prohibition Act.” (Then the reason for admissibility of matters relating to gambling and prostitution is explained, and the jury cautioned with respect to the consideration thereof). “With respect to the defendants R. E. Weniger and Charles Bloom * * I instruct you that these defendants are not on trial for a mere failure to enforce the prohibition laws, state or national, in the village of Mullan or in the county of Shoshone. *These defendants are not accused of acts of omission but of commission, namely, that they entered into the conspiracy described in the indictment to violate the prohibition laws*

of the United States in the particulars set forth in the indictment.

“But, gentlemen of the jury, in this connection I instruct you that where individuals are the occupants of a public office or offices and whose duties in whole or in part require of them the enforcement of the liquor laws and the arrest of those engaged in such law violation, and it is made to appear that within the jurisdiction of such offices, such laws are openly notoriously and continuously violated in such manner and under such circumstances *that the jury is satisfied beyond all reasonable doubt that such peace officers in fact knew of such flagrant, open and continuous violations*, if you find there were such, and that such officers did little or nothing to enforce the laws that were being violated by arresting those engaged in their violation. These are facts and circumstances which you have a right to take into consideration together with all the other facts and circumstances disclosed by the evidence in the case as shedding light on *whether or not such peace officers, or any of them, actually joined the conspiracy charged in the indictment and aided and permitted its execution*. In such circumstances you should inquire *whether such acquiescence in such law violation, if you find there was such, was due to mere negligence, inefficiency, incompetency or inability to perform the public duties devolving upon such officer or officers, or was the conduct passive and intentional with full knowledge of a conspiracy to bring about such violation and was passed with a view and for the purpose of protecting and aiding it*. In other words, *was the inaction or acquiescence, if any, due to a mere failure of duty, or was it a passive refraining from per-*

forming the duty with the knowledge of the violations for the purpose of aiding and assisting in the conspiracy to violate the laws which were being violated?

“Mere lack of diligence in the performance of their duties on the part of public officers is not enough. There must in addition be proof of knowledge of facts showing an intention on the part of the officers in question to aid in the unlawful act by refraining purposely from doing that which they were by their duties of their office bound to do, with the intent and for the purpose of becoming a party to and aiding in the execution of a conspiracy to violate those laws. This you must determine by your verdict in the light of all facts and circumstances disclosed by the testimony in the case.” (Tr. 778-781)

*“ * * While the defendants are jointly indicted and are being jointly tried, it is your duty nevertheless, to consider and apply the testimony to each defendant separately and to determine the guilt or innocence of each defendant as the result of so considering and applying the evidence to him or her * * .”*

The trial court was convinced that there was sufficient evidence under this theory to go to the jury, and denied a directed verdict (Tr. 764); and the trial jury found the sheriff and his deputy to be in the same position as the village trustees and police, and, under the very careful instructions of the court, that the actions and inactions of the sheriff and deputy were deliberate and intentional for the purpose of aiding and furthering the conspiracy—it

found them guilty. Was there not substantial evidence upon which the jury might so conclude? Should the trial court have directed a verdict because of the lack of substance in the evidence?

In the case of *Allen v. U. S.*, 4 Fed. (2d) 688 (7th C. C. A.) it is said:

“A conspiracy may be established by circumstantial evidence, *or by deduction from facts.* The common design is the essence of the crime, and *this may be made to appear when the parties steadily pursue the same object, whether acting separately or together, by common or different means, but ever leading to the same unlawful result.* If the parties acted together to accomplish something unlawful, a conspiracy is shown, even though individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the others. All the conspirators need not be acquainted with each other. They may not have previously associated together. One defendant may know but one other member of the conspiracy. But, if knowing that others *have combined to violate the law, a party knowingly cooperates to further the object of the conspiracy, he becomes a party thereto.*”

Taking the theory of the prosecution and the trial court and the rule laid down in the case last cited, could not reasonable minds deduce from the facts that the sheriff and his deputy steadily pursued the same object as the other defendants, ever leading to the same unlawful result? That the jury, the final arbiter of the facts and conclusions to be drawn

therefrom, did so conclude is evidenced by their verdict.

Bloom was a resident of Mullan, and familiar with it for years, and frequenter of the many places engaged in open violation of the law; Weniger knew his deputy's history, was a frequent visitor to the village, and visited the places violating the law; each knew that men convicted by the Federal government of liquor violations in Mullan and confined thereunder in the jail in charge of Weniger and Bloom, had returned to Mullan and again engaged in business places of the character where the liquor law was being violated. Each knew, as was the common repute, that Mullan was "wide open"; that Federal officers were making arrest after arrest through the years. Here was a small village, not a large city, in which there was not one or two places operating, but almost every other door in a business district of a block and a half, doing a large liquor business for years. The sheriff not only failed to take any action himself, but refused to cooperate with Federal officers, and objected to their activity and to the cooperation given by others. Money was taken by Bloom, and association was shown in the sheriff's re-election. Is the deduction to be drawn from these facts any weaker than that drawn from less facts by this court in *Marron v. U. S.*, 8 Fed. (2d) 251 in which the government's theory was identical, as to

police, with the theory in this case, and expressed by this court as

“The government’s contention is that they (the police) became parties to the conspiracy by the corrupt receipt of money and *by securing the other defendants against interference by the police.*” (In determining that there was joinder in the conspiracy by the police this court excluded consideration of the receipt of money—see page 257).

There a single flat was operated for 17 months in a large city a half block from a police station, as a saloon doing a large business. From this alone this court said:

“The circumstances suggest a corrupt understanding with men in the police force as an indispensable condition to the continued operation of the business.”

How much more logical is the conclusion in this case that the circumstances suggest a corrupt understanding, a conspiracy, with the police and officials of Mullan, and even with the sheriff and the deputy, as an indispensable condition to the continued operation of numerous wide open street level saloons in a tiny village, saloons with open swinging doors, from which odor of liquor came out into the streets, and into which from the streets anyone could look upon the drinking at the bar.

Again this court held the policemen properly convicted in the Marron case *though not a single affirmative act in aid of the conspiracy appears from*

the opinion. Gorham, sergeant of police, on instructions that the place was a bootleg joint, visited it, was denied the right to search, knew the bartender, reported the place as a residence, saw a drink taken there; Kissane, policeman on the beat, suspected the flat, went through the rooms, found no evidence, visited the place twice a week and never saw evidence of bootlegging, saw whiskey glasses and empty liquor bottles, and the occupant told him he was a bartender. A ledger made by another person indicated payments to Gorham and Kissane. This Court said:

“The jury must have concluded from the testimony of other witnesses that the flat was fitted up with all the facilities for the sale of liquor. * *

“The Court did not err in holding that there was prima facie evidence that Gorham and Kissane were parties to the conspiracy.” * * *

“If the evidence shows a detail of facts and circumstances in which the alleged conspirators are involved, *separately* or *collectively*, and which are clearly referable to a preconcert of the actors *and there is a moral probability that they would not have occurred as they did without such preconcert*, that is sufficient, *if it satisfied the jury* of the conspiracy beyond a reasonable doubt. Daws v. U. S., 107 F. 753.”

“The evidence against Gorham and Kissane was sufficient to take the case to the jury, *and it was for the jury to say whether it satisfied them beyond a reasonable doubt.*”

In the Marron case conviction of police seems to have been sustained on account of knowledge, opportunity, and failure to act, supplemented by entries in a ledger kept by other conspirators who were liquor dealers. In this case every one of those conditions existed and far more, for in this case affirmative acts in aid of the conspiracy were shown. Bloom personally warned McGill of impending Federal raids. Bloom and Weniger, after McGill gave information to Federal officers investigating this very Mullan conspiracy, accused him of helping the government and warned him to stay out of the joints; on the arrest of Barron by Bloom and Weniger, for an alleged assault, Barron's note book with records of purchases of liquor in Mullan was taken and Barron admonished against giving information and threatened with deportation, and other prisoners allowed to beat him up; when raids were made by Federal officers, Weniger objected to deputy sheriffs from other counties assisting them; when McCreary told Bloom of liquor conditions in Mullan and asked him why he didn't close the places up, Bloom replied that he was not running the County; that he had to do as he was told; and the next day Weniger, with Bloom, visited McCreary's father, told him the son was sassy and if he didn't stop it, they would arrest him; Bloom warned the McCrearys to close up, the Federals were coming in; and most significant was the Rogers-Cooper incident. The latter were investi-

gating the Mullan and Wallace conspiracies, working under cover. While their identity was known to some people in the county, nevertheless Cooper during all the time he was working in Mullan and Wallace *until uncovered by Bloom and Weniger*, was able to frequent the liquor joints, observe liquor sold, and to buy liquor himself. But within 15 minutes of the time his, and Rogers', identities were disclosed to Bloom and Weniger, he was refused admittance to the very places in Mullan and Wallace where as late as the night before he had been a welcome patron.

In this case there was not only deliberate failure to prevent liquor violations, which the jury found, under instructions from the trial court, was with the intent and purpose to join the conspiracy and in aid of it, but there was deliberate obstruction of Federal enforcement in the village itself with intent and purpose to aid the conspiracy and under the Allen, the Burkhardt, and the Marron cases:

“The evidence * * * was sufficient to take the case to the jury, and it was for the jury to say whether it satisfied them beyond a reasonable doubt.” (Marron v. U. S., 8 Fed. (2d) 251, 258).

The most effective help that the officers could give to the accomplishment of any crime would be inaction, that is, by failing to do his sworn duty to apprehend the criminal, upon a prior agreement with the criminal that he would not apprehend him.

What better aid to a bank robber than his knowledge that the policeman on the beat, knowing of the contemplated crime, would not interfere—would do nothing. It would seem that to say that when an officer purposely gives that kind of help which is essential to the carrying out of the conspiracy by removing an obstacle to it, that he is not guilty would be saying that it is impossible for an officer to be guilty of joining such a conspiracy unless he actually engages in the traffic himself. —The jury found (1) that Bloom and Weniger knew of the existence of the conspiracy, (2) that they purposely and with the intent of aiding and assisting the accomplishment of its objects refrained from doing their duty (the most that they could do) and in this manner joined the conspiracy. Certainly the facts justified the finding of the jury. It would seem that the question in its final analysis is whether or not an officer can join in and participate in a conspiracy by *purposely refraining from* enforcing the law and thus intentionally aiding the accomplishment of the objects of a conspiracy? If he can, then surely in light of the jury's verdict, the appellants are guilty.

II

The opinion states:

“The cross examination of appellant Bloom, respecting his knowledge of the prevalency of gambling in Mullan had no reasonable relation to the charge being investigated * * These facts

were not relevant to the question as to whether the appellants had engaged in the conspiracy to violate the National Prohibition Act in the Village of Mullan as the Indictment charged and the admission of the testimony was error."

The logic of this conclusion escapes us, especially in view of the express holding of the opinion that

"Competency was claimed for this evidence (of gambling and prostitution conditions and payments) on the ground that the assorted vice was so intermingled with the business of liquor selling that it could not be separated. In the main this was probably so as affecting the actions of the village officials."

While the object of the conspiracy which permitted the United States to intervene was that of violation of the National Prohibition Act, yet it clearly appears that that was not the sole object. The conspiracy was a general one, relating to various forms of law violation, having as its objects, not only the fostering and carrying on of the liquor business, but also the violation of state laws by the fostering and carrying on of gambling and prostitution. The conspiracy was a single one—its objects were many but inextricably interwoven—the same place engaged in dealing in liquor also engaged in gambling, or in prostitution; payments were made for both; the same individual engaged in one or more; collections for all were made at the same time, by the same means, by the same persons, and entries made upon the same subscription list, and reported in one re-

port to the same trustees. One standing by and observing one could observe the other, the businesses being carried on within the same room. The prostitute dealt in liquor, the gambler dealt in liquor, the liquor dealer ran a gambling game, and all joined together with officials to effectuate the common purposes.

In the government's case these objects and their inter connection had been shown, and also had been shown Bloom's association with the persons and places involved, as well as his activity, and lack of activity, knowing the conditions, with respect to such objects which the single conspiracy sought to accomplish. Under these conditions Bloom took the witness stand and upon his direct examination told of his visits to the various places and what he saw or did not see there.

"I have had occasion to go around the county into the various poolrooms and social places and soft drink places on business. I collect the pool table license the first month of each quarter for the county and state. I collected * * at Le Gores * * Bilberg Hotel * * Miners Club * * Victor Hotel * * Mullan Pool Hall * * Yellowstone Cigar Store * *. As to the other places that have been mentioned in this testimony, I had no license collections to make there. * * I only went into these places when I was looking for somebody * * I did not for any other purpose or any other occasion (Tr. 720-721). * * I went into the

Bolo looking for parties * * I went to the Bilberg Hotel several times to find a certain fellow I wanted to serve with some papers. I went to Le Gores * * When I was in these places during these periods I did not see any liquor, did not see any being drunk or sold; did not see any liquor brought or taken out (Tr. 722) As deputy sheriff it became necessary for me to ascertain the addresses of people at times and to go into these various hotels in Mullan. The hotels then were the Central Hotel, Bilberg Hotel, Victor Hotel and Stevens Hotel. I never saw liquor sold in any of these various places in Mullan. (Tr. 725)."

In other words on his direct examination he told of visiting places, especially the Bilberg and the Central, which had already been shown by the government to be gambling and liquor joints connected with the conspiracy and participating in two of its objects, liquor and gambling, and told why he went there, what he did there and what he saw or did not see there. It then certainly became proper in view of the scope of the conspiracy, and in view of his own direct testimony, to cross examine relative to his purpose in going into these places, what he saw and what he did, and his attitude of mind toward law violations therein in his presence, and his investigation or lack of investigation thereof. It was proper not only because of the three fold objects of the conspiracy and the association of one object with another, and because also of his own direct examina-

tion, and because also of what he must have been able to see, had he desired, of the open handling of liquor there described in the government's case, but because his inability to see gambling before his eyes, or to take any official action respecting it, was a test of his credibility in denying that he had seen or was aware of liquor violations therein, and of his statement on direct (Tr. 723) "Nobody has ever sold or handled liquor in my presence that was not apprehended," as well as indicative that his attitude toward one of the objects of the conspiracy, gambling, would likely be the same toward another object, namely, the selling of liquor. And prior to the matter held objectionable, he had, on cross-examination, without objection, gone into some detail with respect to part only of the activities of these places. And without objection he also described the bars in the Bilberg and his failure to observe any liquor (Tr. 726-729; 732); he further testified to his knowledge of arrests thereat for liquor, his failure to investigate, and his inquiries regarding it, which in view of the conditions theretofore shown, were incredible (Tr. 733-738). The same is true of the other places where gambling was mentioned in cross-examination.

In addition the Court very carefully instructed the jury relative to this evidence:

"I charge you, however, that the only object of the claimed conspiracy in this case over

which the United States and its courts have any jurisdiction is the one set forth in the indictment, namely, a conspiracy to commit violations of the National Prohibition Act. *A conspiracy with respect to gambling or prostitution, or any of the ordinary forms of municipal vice, if confined to such places, would not be a conspiracy to commit an offense against the United States for the reason that the United States and its courts have no jurisdiction with respect to gambling, prostitution, and municipal vice.*

“The only object of the claimed conspiracy which you may take into account in arriving at your verdict in this case is the object alleged in the indictment, namely, that the parties conspired to violate the National Prohibition Act in the respects enumerated and set forth in the indictment.

“The testimony in this case with respect to gambling and prostitution in the village of Mullan was admitted because it was so interwoven with the charge of violating the laws of the United States, namely, the prohibition laws, that it was competent for you to take it into consideration in connection with all the other facts and circumstances disclosed by the evidence in the case as a shedding light on the question of whether there was a conspiracy to violate the prohibition laws, if in your judgment such evidence has any such effect. * * * (Tr. 778, 779).

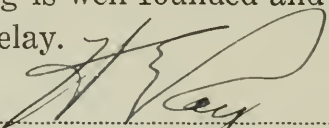
“In conclusion, gentlemen of the jury, I admonish you that in arriving at your verdict you must be guided solely by the evidence and instructions of the court in accordance with the solemn oath which you have taken. There is no place in your deliberations for prejudice or bias

or sympathy or sentiment. Let your verdict be impartial and fair—fair to the Government and fair to the defendants charged with a violation of its laws.” (Tr. 791)

We respectfully submit that the petition for rehearing should be granted and the judgment of the lower court affirmed.

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I hereby certify that in my judgment the above petition for rehearing is well founded and that it is not interposed for delay.


.....
Attorney for the United States.

